The PRESIDING OFFICER. The Senate is still in morning business.

Mr. CHAFEE. Parliamentary inquiry. It is my understanding that we will start the rollcall vote on my amendment at 1 o'clock, is that correct?

The PRESIDING OFFICER. The Senator is correct.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 391, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 391) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources, and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

The Senate resumed consideration of the bill.

Mr. BIDEN. Mr. President, I yield to the Senator from Kentucky.

AMENDMENT NO. 1256

Mr. HUDDLESTON. Mr. President, I thank the distinguished Senator from Delaware.

Mr. President, there is no subject that is of more interest to me than the one we are considering at the present time. As one who has served on the committee of the Senate dealing with our intelligence operations since its inception, I have been keenly aware of the problem that we are confronted with in the matter of agents being identified to the detriment of our intelligence activities in this country.

I can think of no more despicable act than that of identifying agents with the purpose of impeding our intelligence service. Not only does it place the lives of many dedicated citizens in jeopardy, but it is, in fact, in my judgment, almost tantamount to a treasonous act against the interests of the United States.

I support the bill that has been produced by the Judiciary Committee, without the amendment that has been proposed, and I urge my colleagues to do likewise.

Mr. President, many loyal and decent Americans work for the intelligence agencies of this country. They work long and hard to help give our country the strong and effective intelligence system it needs in today's world. Most of their efforts go unrecognized in the outside world. In many instances, even the families and close associates of these individuals cannot be privy to the nature of their work. Such people assume a solemn responsibility; they are entrusted in the course of their work with some of the most sensitive information in the possession of the U.S. Government. Theirs is not an easy task. It takes an extraordinary kind of person to work within such strictures. Fortunately for America, there are many such dedicated, patriotic citizens working within the ranks of the U.S. intelligence community. Most of these people handle their responsibility admirably, respect the conditions under which they work, and do not abuse their trust.

A few exceptions exist, however. With increasing regularity these days, we learn of individuals who fail to uphold the commitment they have made to maintain the confidentiality of the information with which they work. The flood of leaks of intelligence information in recent years has been alarming. One kind of leak is especially irresponsible, it seems to me. I refer to the revelation of the identities of U.S. intelligence agents which appears to be in vogue these days.

Certain parties in our society have made it their business to publish lists of people they claim are working for U.S. intelligence agencies overseas. They are prompted, they assert, by the highest of principles, as if by exposing these names, they are helping to eliminate, one man at a time, the alleged evils of U.S. intelligence activities overseas and perils of American interventionism.

Their approach is naive, but the tactics they employ are terribly reckless. It is not an idea or a principle that lies in the balance, it is the lives and livelihoods of people—of individuals who serve their country under cover overseas, performing intelligence missions necessary to the security of their fellow citizens and otherwise furthering the principles for which this Nation stands.

There is an impression abroad in certain quarters that intelligence activities, by virtue of their clandestine nature alone, are inherently suspect—and that therefore all facets of intergovernmental and international relations should be open to public scrutiny. Such reasoning is simply wishful thinking in the complicated times in which we live. We demand that our intelligence agencies act in a responsible manner; we have oversight committees in each House of Congress to help insure that they do, but we cannot reasonably ask to be made aware of every detail of their dealings. Often sensitive tasks which can be crucial to the formulation and conduct of a sensible foreign policy lie in the hands of the country's clandestine service. In intricate negotiations or fast-moving international crises, it is often extremely valuable to have confidential information on the bottomline positions of the various parties. An individual operating undercover will be more readily trusted with off-the-record assessments than an individual operating in an official capacity would be.

In short, in a number of instances, confidentiality is not only a useful adjunct to, but a key component of, our relationships with other nations. To reveal the identities of people serving undercover abroad or to expose their relationship with U.S. intelligence services would radically reduce if not completely destroy their effectiveness in accomplishing their mission overseas. And yet this is precisely what some individuals are dead set on doing.

A recent book of this genre, "Dirty Work II," features an appendix of biographies of individuals alleged to be U.S. intelligence agents overseas. This "Who's Who" listing is entitled "Naming Names." Such naming of names must stop.

We have before us today a bill that will go far to stop these evil activities. I am a cosponsor of that bill and believe it is necessary. Even while moving toward stopping "the naming of names," this body must be careful to meet the requirements of the first amendment which states in part that:

Congress shall make no law . . . abridging the freedom of speech, or of the press.

The main purpose of the first amendment is to protect discussion concerning governmental activities. As the Supreme Court has stated:

The freedom of speech and the press guaranteed by the Constitution embraces at the least the free discussion of governmental affairs. See, e.g., *Mills* v. *Alabama*, 384 U.S. 214.

Without a free exchange of information, conducted largely through the facilities of the press, an informed electorate—the prerequisite for a vigorous democracy—could hardly exist.

Thus, we must be certain in passing S. 391 that legitimate criticism of the Government, its policies, or its intelligence agencies is not unduly or unnecessarily abridged. In a time when efforts of the press have uncovered former Government officials abetting world-wide terrorism, the importance of the press in a free and open society is clear.

Any bill must be aimed at those people who are in the business of naming names and not those engaged in criticism of the Government. The uncle of my honorable friend from Rhode Island, the great legal scholar Zechariah Chafee, recognized that critics of the Government would receive protection under the first amendment if a specific intent standard is included in statutes designed to foster the national security. Professor Chafee condemned a decision of the Supreme Court dealing with the espionage statutes of the day because he felt the court had not required specific intent to harm the United States. See *"A Contemporary State Trial—The United States* v. *Jacob Abrams, et al."* 33 Harvard Law Review, 747, 765 (1920).

Fortunately, in the bill as reported by the Senate Judiciary Committee, there is a requirement that any prosecution against any person who has revealed the name of an agent will only be justified when the person has acted with intent to impair or impede the foreign intelligence activities of the United States.

This provision will protect those whose intention it is to further free discussion of governmental activities, but at the same time it will allow prosecution of those who name names in order to harm the United States. In the recent case of Haig against Agee, the Supreme Court upheld the revocation of the passport of Philip Agee, a former CIA agent who made a practice of revealing the alleged identities of officials serving overseas undercover. This could be done, the Court said, because "Agee's disclosures * * * had the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel."

In other words Agee's disclosures were not furthering free discussion of intelligence activities in the United States, instead his disclosures were, for all intent and purposes, action designed to inhibit the Government's legitimate intelligence operations. It is not speech per se that would be punished, but instead the harm to foreign intelligence activities of the United States that flows from the disclosure.

The statute would be no different in this way from the espionage or treason statutes. One can criticize the United States forever and a day, but when one begins transmitting information to a foreign country, these criticisms can be used to prove the state of mind necessary for punishment under the espionage statutes.

Similarly, under the treason statute, specific intent to aid and comfort the enemy must be proven.

I am not a lawyer but I feel that S. 391 as reported by the Judiciary Committee and especially that committee's amendment to section 601(c) will inhibit those in the business of naming names while permitting continued free discussion of governmental affairs. Let us then pass this bill with a provision that will protect the first amendment even while deterring those who wish to obstruct the lawful functions of our intelligence agencies.

At the end of the floor debate on Tuesday, Senator GORTON and Senator QUAYLE strongly urged Senator CHAFEE, and Senator BIDEN to agree to a compromise. The basic idea of the compromise is to put into the bill itself the essential legislative history of the Chafee amendment that was first adopted in 1980 by the Senate Intelligence Committee and that was reaffirmed in a floor colloquy between Senator DURENBERGER and Senator CHAFEE.

Senator CHAFEE'S amendment uses the words "pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States."

Senator GORTON proposed a definition of pattern of activities that would require proof that the main direction of the pattern of activities is to identify and expose covert agents.

Under Senator GORTON'S compromise, it would not be necessary to prove intent to impair or impede foreign intelligence activities. However, it would be necessary to prove that someone is in the business of naming names. This is exactly what Senator CHAFEE has said is the meaning of this amendment. It is what the Senate Intelligence Committee's report established as the legislative history of Senator CHAFEE'S language when it was first reported in 1980. And it represents a serious effort to resolve the issue by reasonable compromise rather than continued confrontation.

Everyone recognizes that the Senate is deeply divided over this bill. But is that kind of division the best way to legislate on matters as vital to the Nation as it's intelligence capabilities and the freedom of the press?

If one side or the other wins on this issue, then it will be taken as a defeat either for the intelligence community or for the first amendment. It is a mistake to let this happen. Given the choice, our fundamental commitment to the constitutional guarantees of freedom of the press requires us to choose the alternative that better protects the right to print the news. But it would be far better to make the extra effort on both sides needed to reach agreement on standards that strike the delicate balance in a way that can secure the widest agreement.

Mr. BIDEN. Mr. President, I would like to make one closing comment on this bill. The fact of the matter is that this is a distinction with a difference. It is a significant difference. The difference would be, in my opinion, that if, in fact, this amendment is passed changing the requirement from intent to a requirement of reason to believe, that we are making a significant move in the direction that we have not moved in the past from applying a negligence standard on criminal actions.

The Senator from the State of Washington, Senator GORTON, came forward yesterday with several compromises, one in particular that was of particular consequence. I believe that even if the Chafee amendment fails, I quite bluntly do not see how the intent language is going to survive in a conference. The House voted down the intent language overwhelmingly.

The Gorton language, if we get to that point and I am a conferee, which I will be, will be language that I will push as a compromise, assuming that there is a rejection of the intent language.

It is a reasonable compromise. It sets out a standard for defining what constitutes a pattern of activity, so that it is something of consequence. It is a protection that would be consistent with the constitutional requirement, as I understand it, to protect the actions and publications and freedom of speech of those who would publish the names of agents.

The essence of it is fairly simple. It suggests that in order for you to be able to convict a reporter who has, in fact, mentioned the name of an agent, you would have to show that it is his purpose, his primary purpose, to do that. If it is an ancillary effect, if he is writing a book or a piece on the corruption within the Agency and/or a particular individual and he can show that in court, he is not guilty of a crime. The protection is not as significant as the protection of intent, but it is significant. It is not unimportant. I want my colleagues to be aware of that.

I see the Senator from Rhode Island on his feet, and since we have 30 seconds left I will yield it to him to have the last word.

Mr. CHAFEE. I thank the Senator very much.

Mr. President, the so-called Gorton language imposes a standard that would be extremely difficult for the prosecution to meet because the defense would clearly be that it was not the primary purpose.

As was mentioned yesterday in the debate, the defense would be, "I told my wife that was not the primary purpose. I told my editor. I told my publisher."

So the defense that this was not the primary purpose of the disclosure of these names would be a very difficult one for the prosecution to overcome.

For those reasons, I urge my colleagues to support the Chafee-Jackson amendment before us today.

Mr. President, for the past 2½ years, the Senate has labored over legislation to prohibit the unauthorized disclosure of the names of covert agents. The distinguished Senator from Alabama, the distinguished Senator from Delaware, and many, many of my colleagues from both sides of the aisle have worked hard to see that we pass legislation which is effective, and which is protective of first amendment rights.

Now we are coming down to the line on this legislation. We are coming to the point at which we must make a choice and vote. Two and one-half years and many thousands of hours—all will stand or fall on what we do today.

Mr. President, in summarizing my remarks, I would like to make the following points:

First, neither the Chafee-Jackson language nor the committee language, if law, would have prevented the New York Times from publishing stories on the Wilson-Terpil case. Wilson and Terpil were former employees of the CIA, and former officers are not pro-

tected in either version of the Senate bill.

Second, nothing in the Senate language would have prevented the Washington Post from publishing the name Mel Weinberg, who was involved in the Abscam case. He, too, is not a covert agent as defined by this bill.

Third, the House of Representatives passed a bill containing the Chafee-Jackson language by a vote of 354 to 56 last year. If the Senate does not support the amendment language here today, there will be a conference involving major differences between two bills. Mr. President, it is very important for Senators to understand that a vote against the Chafee-Jackson amendment is a vote for the possibility there may be no bill at all on this subject this year.

Fourth, there has been a lot of debate on the "specific intent" standard which the Judiciary Committee adopted by a narrow vote of 9 to 8, and the "reason to believe" standard that Senator JACKSON and I are promoting in our amendment. Mr. President, 2 years ago in hearings before the Senate Intelligence Committee, Robert L. Keuch, Associate Attorney General under President Carter testified that:

> The "specific intent" requirement may "chill" legitimate critique and debate on CIA policy;
>
> The "specific intent" requirement can hamper effective enforcement by creating a difficult jury question;
>
> The "specific intent" requirement will facilitate greymail efforts; and
>
> The Carter Administration Justice Department did not know whether the "specific intent" requirement would be upheld as constitutional.

It was because of Mr. Keuch's concerns that the Senate Intelligence Committee and the Justice Department reworked the "specific intent" standard and came up with the objective standard of "reason to believe." Regarding the objective standard, Deputy Attorney General Renfrew of the Carter administration, then wrote:

> This formulation substantially alleviates the constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill that included a requirement that prohibited disclosure made with specific "intent to impair or impede" U.S. intelligence activities.

Fifth, the Chafee-Jackson language is the only version that has been endorsed by both the Carter and Reagan administration Justice Departments. It has passed the House of Representatives. It is preferred by the CIA. If the Senate goes back to the "specific intent" standard which the Judiciary Committee narrowly adopted, we will be going right back to a standard which the Justice Department—the Carter administration Justice Department—declared inadequate over 2 years ago. This does not make sense to me.

Sixth, there has been a good deal of press and media attention paid to agent identities legislation. Some of my colleagues may have been mislead into thinking that press criticism applies only to our amendment. Mr. President, let us be fair on this point. Press criticism of this legislation has consistently applied to all versions of identities legislation. On March 4, the New York Times editorialized that:

> Congress cannot reach private citizens like Louis Wolf, publisher of the "Covert Action Information Bulletin," without chilling other, more precious journalism or debate.

On March 2, the Christian Science Monitor wrote in an editorial that to deny American citizens the right to publicize information obtained through public sources "may be sufficient in itself to render the act unconstitutional." Mr. President, the American Civil Liberties Union, the so-called 100 distinguished law professors and virtually all of the newspaper editorials enclosed in Senator BIDEN's recent "Dear Colleague" letter oppose both versions of the language in subsection 601(c). They call for deletion of this subsection. They claim, in effect, that the problem of "naming names" cannot be solved, and that the Congress should not try.

Finally, while the media may counsel the Congress not to attempt this legislation, I believe we have a responsibility to do so. Long ago, it was decided that one's right to freedom of speech ends where another man's safety begins. My uncle, Zechariah Chafee, wrote in his classic work titled "Free Speech in the United States" that the boundary line of free speech "is fixed close to the point where words will give rise to unlawful acts." Mr. President, naming names has given rise to unlawful acts. Richard Welch was murdered in Greece. The Kinsman family was terrorized in Jamaica. Even as I speak here today, American officials are being detained, threatened, and harassed in Nicaragua. There is no right under freedom of speech to cry "fire" in a crowded theater. There is no right, having observed the departure of a troopship, to publish this fact to the world.

Mr. President, it is my judgment as well as my deepest belief, that this Congress can and must place a criminal penalty on the pernicious activity of "naming names." We must protect the lives and missions of those men and women who serve this Nation and this Congress on difficult and dangerous missions abroad.

I urge my colleagues to vote for this amendment.

Mr. BIDEN. Mr. President, I ask unanimous consent that Senators who wish to put statements into the RECORD on this matter be allowed to do so even after the vote while business is open today and have their statements appear as if made prior to the vote. That is because we were not able to confer with all Senators on this unanimous-consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I rise in opposition to the amendment offered by the Senator from Rhode Island, Senator CHAFEE. The legislation we are considering is intended to address a serious problem affecting our national security. The reprehensible actions of a few individuals who seek to impede our intelligence activities by disclosing the names of our covert agents overseas deserve the Senate's concern. Within the limits of the Constitution, we must act to prevent the recurrence of these disclosures and to protect the safety of our covert agents.

There is no disagreement over the bill's objectives. The disagreement is over how best, and constitutionally, to achieve those objectives. Specifically, the disagreement centers on the legal test to be applied to the motivation of the person accused of naming names.

Did the person have reason to believe that his or her actions would impair or impede the foreign intelligence activities of the United States? Or did the person intend to impair or impede the foreign intelligence activities of the United States? The difference is significant, both with respect to the practical effect and the constitutionality of the legislation before us.

The subject matter of this bill falls within a questionable area of constitutional law. There is no established case law or precedent that establishes whether our attempts to prohibit this activity are constitutional. Constitutional scholars offer widely varying analyses of the constitutionality of both versions of the bill. Many believe that any attempt to punish the publication of information derived solely from public sources is unconstitutional.

We cannot here resolve that aspect of the issue. Unquestionably, a court, perhaps the Supreme Court, will be the final arbiter of the constitutional question. But that does not mean we should ignore the constitutional significance of this or any other legislation we consider.

It is obvious that this bill will be tested by comparing the interests involved under constitutional principles. We are considering a proposal which affects the exercise of rights guaranteed by the first amendment. We are proposing that certain activities, which on their face fall within a constitutionally protected area, become illegal and punishable.

We know that this legislation will be challenged in court. Obviously, we should carefully analyze these proposals to assure that we achieve the objective of prohibiting further disclosures endangering our intelligence activities while at the same time, making a minimal intrusion on the exercise of the first amendment rights.

Clearly, the "reason to believe" standard is open to more serious and credible constitutional challenge than the intent standard. Clearly, the

"reason to believe" standard would have a more chilling effect on more first amendment activity.

The compelling question, then, becomes whether S. 391, as reported, will achieve the objective we all share. Will individuals who have engaged in a systematic effort to destroy our intelligence capabilities to operate covertly by disclosing agents' identities be subject to prosecution and conviction under the "intent" standard?

I think they will. A large number of my colleagues think they will. Even the administration, which favors the Chafee language, thinks they will. In response to a question posed by Senator BIDEN at a hearing on this bill, Mr. Richard K. Willard, testifying on behalf of the Attorney General, unequivocally stated that the administration would support either version.

What then is the controversy? Much of it has focused on whether the reason to believe language would have a chilling effect on the investigative reporting of persons not engaged in the activity of naming names, but rather in the activity of exposing abuses of power by the executive branch, through the operations of the CIA.

The Chafee amendment would apply to those who "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States * * *"

Senator CHAFEE has argued that the pattern of activities language is designed specifically to narrow the scope of criminal liability so as to protect the civil liberties of those, such as investigative reporters, who are not in the business of naming names.

But what constitutes a pattern of activities? Section 606(10) of the bill defines a pattern of activities as a series of acts with a common purpose or objective. What then constitutes a series of acts?

For the sake of discussion, let us consider a hypothetical situation in which a reporter for the New York Times learns of a CIA plot to overthrow the Sandinista government in Nicaragua. Given recent press reports, this may be more than hypothetical. Nonetheless, let us assume that in the course of the investigation the reporter conducts interviews with Nicaraguan officials for the purpose of identifying and exposing those agents within the CIA who are involved in the plot to overthrow the government there. Would these repeated interviews not constitute a "pattern of activities," that is, a series of acts in the context of the Chafee language?

Further, let us assume that prior to writing the story the reporter contacted a high-ranking CIA official who informed her that if the Times runs the story it will definitely impede the foreign intelligence of the United States. In writing the story, then, would not the reporter have had a reason to believe that her activities would impair or impede the intelligence activities of the United States?

Given the above circumstances, a jury would have no alternative but to find the reporter guilty of violating the law, under the Chafee language. I firmly believe that this is not the intent of my good friend from Rhode Island. Nonetheless, I am convinced that this would be the outcome if the Chafee language were enacted.

Senator CHAFEE has argued that his amendment would substitute an objective "reason to believe" standard for an overly broad, "subjective intent" standard. I submit that it is the "reason to believe" standard, not the intent standard, which is overly broad.

It has also been argued that the intent standard would pose prosecutorial problems in those cases where an individual claims his or her intent was not to impair or impede the intelligence activities of the United States, but rather to inform the public, or even to "improve" U.S. intelligence. In th words of Senator CHAFEE, in these cases, the intent standard would provide "a loophole big enough to drive a truck through."

But it is not enough merely to assert what the defendant's intent was. It will be up to the prosecution, before a jury, in a court of law, to prove intent. It will be up to a jury to decide, based on the evidence presented at the trial, what the defendant's intent was in publishing the names of the covert agents.

We could debate forever what we believe a person's intent was in a given hypothetical. The fact remains, however, that it will be up to a jury to decide. To assert that juries do not have the ability to determine intent borders on the ludicrous. As a former Federal judge, I can assure my colleagues that every day in every State juries determine intent.

Finally, during the course of this debate it has been argued that the "reason to believe" standard will in fact protect investigative reporters' first amendment rights more than will the intent standard. I disagree. The Society of Professional Journalists, the American Newspaper Publishers Association, the National Newspaper Association, the Reporters Committee for Freedom of the Press, and the National Association of Broadcasters all disagree. The editors of virtually every major newspaper in the country disagree.

I ask unanimous consent to have printed in the RECORD a few excerpts of some of these editorials. I want to make it clear that these excerpts do not represent the endorsement by these papers of the agent identities bill; rather, they express their preference for the intent standard over the "reason to believe" standard.

That preference is well founded. Proof of criminal intent is fundamental to conviction of a crime. It should be required here.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 4, 1982]

THE SPY BILL WRAPPED IN THE FLAG

The closer the Senate gets to voting on the "Intelligence Identities Protection Act," the clearer it becomes that this bill dangerously exceeds its announced purpose. It was prompted by former agents who break their oaths and expose American secret agents in risky intelligence work. But Congressional anger soon spread to individuals who never worked for the Government but engage in similar exposures using publicly available information. And that, in turn, has raised concern about the possible use of the act against news organizations.

If there was any doubt that the act extends that far, it has now been put to rest. Senator John Chafee, a chief sponsor, has clarified the bill's threat to conventional journalism—and public discussion generally.

Asked whether a prosecutor could use the bill against reporters and news organizations for exposing crimes and abuses by agents and informants, the Senator had this reply: "I'm not sure that The New York Times or The Washington Post has the right to expose names of agents any more than Mr. Wolf or Mr. Agee," two of the bill's main targets. "They'll just have to be careful about exposing the names of agents."

Senator Chafee makes the bill's danger explicit without seeming to understand its cost to public discussion of security issues. Perhaps inadvertently, he makes the case for trimming back this inflated piece of legislation. No assurances that the law would be carefully administered can suffice when the warning to reporters is: be careful about getting the Government mad.

Unfortunately, to cite a case in The Times's experience, being careful doesn't help decide how to deal with former spies like Edwin Wilson and Frank Terpil. The Times put together—carefully—stories about how the former agents trained terrorists abroad and engaged in suspicious weapons and technology deals. The stories raised questions about the former spies' connections to the Central Intelligence Agency, whether real or feigned.

At a minimum, these foreign adventures challenged the country's ability to avoid embarrassment by once-trusted employees. The stories brought about other investigations, by Congress and the C.I.A. itself.

But it doesn't seem to matter how much care went into those stories. It doesn't matter how much they have been supported by official investigations. None of that would protect the paper against a wrathful prosecutor armed with the pending bill.

The Senate should restrict it to the punishment of people like Philip Agee, the former spy who first specialized in agent exposure. Congress cannot reach private citizens like Louis Wolf, publisher of the Covert Action Information Bulletin, without chilling other, more precious journalism and debate. In no case can the Senate responsibly follow the House's reckless example and make it a crime to identify an agent without even requiring proof of criminal intent.

Until now, the Reagan Administration has managed to wrap this bill in the flag. That conceals its danger to liberty—and to the public knowledge on which true national security rests. There is a difference between patriotism and chauvinism. Senators Biden,

Bradley, Leahy, Specter and Quayle have been in the forefront of those who have exposed at least some of the bill's excesses. The entire Senate needs equal courage and wisdom.

[From the Washington Post, Mar. 3, 1982]

PROTECTING INTELLIGENCE AGENTS

The Senate has begun consideration of a bill that would outlaw the activity of a small band of individuals determined to destroy America's foreign intelligence apparatus by revealing the names of covert intelligence agents. The practice, associated with author and former CIA officer Philip Agee, has already been cited as leading to the murder of the CIA station chief in Athens in 1975 and to an assassination attempt on the life of another American official in Kingston, Jamaica, in 1980. Mr. Agee has revealed the names of 1,000 alleged CIA officers, and a newsletter, Covert Action Information Bulletin, edited by Louis Wolf, has printed 2,000. Legislation to inhibit such practices is not a bad idea as such.

Prosecuting private citizens for publication of *any* material has constitutional implications, however, and special care must be taken to delineate the conduct Congress wants to inhibit while protecting legitimate activities where no intent to disrupt intelligence activities exists. Readers will note that this newspaper, like all others, has a strong interest in preserving broad latitude in reporting foreign affairs.

The best way to ensure that the real culprits are reached by the law while others are protected is to require the government to meet a standard of proof that includes "intent to impair or impede the foreign intelligence activities of the United States." This is the language of the bill that was reported by the Senate Judiciary Committee last fall and that is now being considered by the full Senate. It is expected, however, that an amendment will be offered that would substitute for the intent standard a simple requirement that the accused simply "had reason to believe" such a result would occur. This amendment is identical to one that was adopted on the House floor when that body passed the bill last September. It is the version preferred by the administration, though Richard Willard, the attorney general's counsel for intelligence policy, has stated that either version of the bill is acceptable so long as some bill is enacted without further delay.

The requirement that intent be proven in criminal cases is an essential element of Anglo-Saxon jurisprudence. It is especially important that it be preserved in this instance because a lesser standard may inhibit the exercise of legitimate First Amendment rights by those having absolutely no desire to cripple our intelligence services.

[From the Louisville Times, Feb. 26, 1982]

SENATE VERSION OF SPY DISCLOSURE IS BEST—IT MUST NOT ADOPT OPPRESSIVE HOUSE VERSION, WHICH GOES TOO FAR

Congress appears determined to pass a new law this year that will make it a crime for citizens to disclose the identity of American intelligence agents, even when the information comes from public or unclassified sources.

The object is to crack down on a few anti-CIA zealots who maliciously publish agents' names and whose dirty work has had tragic results.

While Congress is justly angry about such disclosures, its remedy could do more to deny the public legitimate information about the government than to protect U.S. spies.

Since there's little doubt that a "names of agents" law will be passed, however, the issue is which of two versions the lawmakers will adopt. A crucial choice is expected early next week in the Senate.

Unfortunately, the House has already passed a bill that would discourage public scrutiny of spy agencies and is surely unconstitutional.

A far better version being considered by the Senate could deal with the problem that concerns Congress without insulating the CIA from legitimate inquiry. It deserves the support of Senators Ford and Huddleston.

No one seriously objects to portions of the bill that would punish former agents who deliberately disclose secrets and betray erstwhile colleagues.

But there are important differences in the provisions that apply to the rest of us—Americans who do not have classified information, but do have an interest in finding out whether intelligence agencies operate within the law.

The House went seriously astray when it decided that a person could be guilty of a crime if he disclosed an agent's identity *with reason to believe* that intelligence activities would be impaired. A reporter or other citizen who exposes CIA abuses acould go to jail under that standard.

That's why it's imperative that the Senate insist on the version which requires the government to prove a person acted with *intent* to damage intelligence activities.

This language would apply to those whose sole purpose is to impair intelligence but not, most observers agree, to publication of legitimate information.

Moreover, the "intent" version is acceptable to the CIA. If there must be a law, this one does what Congress wants in the least offensive manner.

[From the Pittsburgh Post-Gazette, Sept. 28, 1981]

AN UNSOUND SPY LAW

Like other human beings, journalists are sometimes tempted to exaggerate the dangers to society of measures that might limit their freedom of operation. So there is undoubtedly some hyperbole in dire predictions that investigative journalism will be fatally crippled by a bill in Congress that would punish the publication of CIA agents' names. It will take more than one clumsily drafted (or even unconstitutional) law to prevent journalists from investigating abuses by any government agency, the CIA included.

Still, that is no argument for the enactment of a bill that might needlessly interfere with journalistic investigation of the sort of illegal CIA spying on Americans that the agency would like to have the nation forget. And a bill passed last week by the House fits just that sorry description.

Designed to deal with the identification of CIA agents by agency renegades like Philip Agee, the bill as it emerged from the House Intelligence Committee would have made it a crime to identify intelligence agents only if the person making the revelation did so with the "intent to impair or impede the foreign intelligence activities of the United States." That careful language obviously was designed to deal with the discrete problem that prompted legislation in this area in the first placed—the deplorable campaign by avowed opponents of U.S. foreign policy to cripple the CIA abroad.

Unfortunately, on the House floor, conservative Republican Rep. John Ashbrook succeeded in having that qualifying language stricken and replaced with a less precise provision making persons criminally liable if they "had reason to believe" that disclosure of an agent's name would harm the national interest.

The difference between the two formulas might seem a matter for legal hairsplitters. But the Ashbrook language, endorsed by the Reagan administration could be used against not only the Philip Agees of the world but also journalists who happened on CIA activities directed (illegally) against American citizens or in contravention of presidential or congressional directives.

Depressingly, similarly broad language has been adopted by framers of a Senate version of the spy bill. That makes it unlikely that a conference committee will take the—admittedly speculative—fears of journalists into account when writing a compromise measure. But those senators and representatives who believe that seemingly fine distinctions can be important should press for a defeat of the broader bill in the respective chambers.

[From the Chicago Tribune, Oct. 27, 1981]

. . . AND LIMITING A DANGEROUS BILL

The U.S. Senate is about to consider a bill that could have a serious impact on the ability of Americans to discuss the government's intelligence activities. It makes it a crime, under certain circumstances, to divulge the name of a secret U.S intelligence agent.

The goal—to protect agents abroad from the kind of campaign of disclosure that has been mounted by ex-CIA agent Philip Agee—cannot be faulted. But when the House of Representatives got its hands on this idea, it pushed it well beyond the Agee situation and passed a bill that puts at his peril anybody who for any reason decides even to talk about the subject.

One particularly dangerous feature of the bill passed by the House does not yet appear in the Senate version that cleared committee and is heading for a floor vote. The House version required that prosecutors only show that a person accused of violating the law had "reason to believe" the disclosure would "impair or impede" the work of U.S. intelligence agencies.

This language, written into the bill at the last minute, renders the motivation of the disclosure irrelevant, putting the university president concerned about having intelligence agents on his faculty or the journalist reporting the misdeeds of a rogue operative on the same footing as the notorious Agee. And it strikes so deeply into the ordinary fabric of expression—forbidding all discussion of a matter that certainly can be of legitimate interest to the public and even forbidding discussion motivated by a reasonable concern that one's employes have undivided loyalties—that it makes what is a questionable law to begin with almost certainly unconstitutional.

The CIA has said that it does not object to the Senate version, which would require prosecutors to prove an intention to do damage to intelligence activities before they could get a conviction. There is no reason to push any further this troubling law—which would punish disclosures even if the information is gleaned from purely public source material.

Undoubtedly there will be a move on the Senate floor to amend the bill to conform to the House's foolish version; if the bill itself cannot be voted down, at least this amendment must be defeated.

[From the New York Times, Nov. 2, 1981]

SHOWING OFF ON SECRET AGENTS

Should Congress decree that information in the public domain may not be publicly repeated? The very idea represents a radical

departure from the American tradition of free speech and press. Yet Congress is seriously considering a bill to make publishing names of covert intelligence agents, even on the basis of publicly available knowledge, a crime. The House passed such a measure last month and a similar bill, almost as objectionable, awaits a vote by the Senate. The Senate should bring Congress to its senses and reject this proposal.

Government is free to keep its secrets—in ways that do not offend the First Amendment. It may swear employees in sensitive jobs to secrecy and it may punish violations of their oaths. But to pass a law that declares non-secrets off limits is to abridge the freedom of speech and press. Congress may not do that.

The legislation has strayed from an earlier, more reasonable course. Congress was rightly angry that Philip Agee, a former C.I.A. agent, misused inside information when he published lists of secret American agents for the avowed purpose of destroying their effectiveness. Present and former agents may not violate their secrecy oaths even in pursuit of their First Amendment rights.

But then the bill's drafters went further, provoked by the antics of Louis Wolf, who never worked for the Government and was never entrusted with its secrets. Working from public documents, he has compiled and published similar lists of supposed agents.

However reprehensible such activity may be, it is simply unconstitutional to try to punish outsiders for trying to figure out, talk about and write about those secrets. It is also unwise, for it could reach more conventional reporting, which often must and should say things that Government doesn't want said.

Even more dangerous is the loose standard of proof in the House version. A prosecutor could bring a charge, and a jury could convict, if the evidence merely showed that the publisher had "reason to believe" the disclosure would hurt U.S. intelligence. That is, whatever his state of mind, the defendant should have known better. At least the pending Senate bill requires evidence that the accused fully intended to impair or impede American intelligence by the very act of disclosing a secret name.

The Reagan Administration wants the looser version but doesn't need it. William Casey, the C.I.A. chief, wrote Congress last spring that either version would meet the Government's needs. Congress has every reason to believe that both versions are unconstitutional, so a Senate vote this week for either amounts to posturing, showing off a reckless patriotism. And there is no excuse at all for choosing the more offensive version.

[From the New York Times, Sept. 28, 1981]

A DUMB DEFENSE OF INTELLIGENCE

The House of Representatives voted the other day to prohibit the identification of present and former American intelligence agents, even if the knowledge is gained from public sources. Fortunately this legislative folly is forbidden by the Constitution, which says Congress shall make no law abridging free speech and press. Unfortunately for freedom—and national security—such a law could inhibit a lot of worthy speech before the courts administer the final constitutional rites.

It's a case of blind zeal and misdirected anger. Understandably incensed by a few individuals who specialize in blowing the cover of secret operatives abroad, the House would indiscriminately suppress reporting that exposes intelligence abuses and stirs reform. Perhaps it will still be rescued by a clear-eyed Senate Judiciary Committee.

Congress's anger was first drawn by Philip Agee, a former C.I.A. agent who practiced a crude and brutal form of politics. Applying his knowledge of spying, he tried to destroy covert operations by figuring out which Americans were stationed abroad under false cover and publishing their names. Louis Wolf, a writer who never served in Government, does the same thing, apparently without the benefit of inside information.

"The Philip Agees of this world" are said to be the targets of this reckless legislation and Mr. Agee, at least, has had few defenders. He has obviously violated his oaths and obligations to protect intelligence secrets gained on the job. But outlawing what Louis Wolf does strikes at every reporter and scholar who would publish facts that Government prefers to keep concealed.

Constitutional freedoms aside, such a prohibition is profoundly unwise. Most reporting, even in embarrassing terrain, advances American interests. In recent weeks, for example, this newspaper has published numerous articles about the shady activities of two former American spies, Edwin Wilson and Francis Terpil. Their ambiguous ties to the C.I.A. and their dealings with terrorists have damaged the United States and fostered violence abroad. Names are indispensable in such stories.

The House bill is so loosely drawn that a prosecutor more interested in secrecy than reform could well consider The Time's stories illegal. Never mind that they have inspired official soul-searching and a necessary Senate inquiry.

The danger within the danger is this bill's standard of legal proof. It would ask a jury to decide whether a publisher had "reason to believe" that disclosing an agent's identity would damage national security; in other words, the mere assertion by a protective Government that it might suffer damage would become evidence of a crime of speech. The House refused to settle for a more rational standard, requiring proof of "intent to impair or impede" the nation's foreign intelligence. Not even the Director of Central Intelligence, William Casey, wanted to go beyond that.

National security is not synonymous with secrecy at all costs. Prudent safeguards against the irresponsible do not require a sacrifice of constitutional liberties. Members of Congress are paid to know the difference.

[From the Christian Science Monitor, Sept. 29, 1981]

Throughout United States history there has always been an uneasy tension between those persons who have sought to protect national security and state secrets and civil libertarians who favored maximum freedom of speech and the abosolute accountability of public officials. Sometimes the tension has equalized itself out. All too often, however, there have been periods of excess when the hand of authority was used to stifle dissent, as in the case of the Wilson administration during World War I when it vigorously sought to jail "subversives" and Congress enacted the Espionage and Sedition acts.

While the present period obviously represents nothing like the drama of those years, there is a certain mood in the land which, unless carefully controlled, could invite a return to the kind of secrecy and lack of accountability that often marked government before the Watergate-era reforms of the mid-1970s. Efforts are currently underway to so shroud U.S. intelligence agencies in a privileged shield of secrecy as to make such agencies virtually unanswerable to the inquiries of a free press or a critical public. Two recent manifestations of this trend are noteworthy:

1. The House last week enacted a measure that would make it a crime for private citizens to disclose the identity of a U.S. intelligence agent, even if the information came from public sources. Lawmakers have sought such a measure for the past five years after a CIA station chief in Athens was assassinated following publication of his name.

2. CIA chief William Casey is urging Congress to exempt national intelligence agencies from the Freedom of Information Act, which allows private citizens (including journalists) the right to petition government agencies for nonclassified information.

Admittedly there is something to be said on behalf of both moves. Identifying names of secret agents is reprehensible. The press, for its part, must exercise the highest degree of responsibility and professionalism in national security matters.

What is worrisome, however, is that the way the House bill has been drafted could prevent the disclosure of abuses by intelligence agencies. The measure says that a person, including a journalist, would be criminally liable if he or she had "reason to believe" that disclosure of the agent's identity would harm national security interests. This was a change from a more restrictive House Intelligence Committee version that said criminal liability would result if the person doing the disclosing had specific "intent to impair or impede the foreign intelligence activities of the United States."

The Senate should reject the House phrasing and adopt the stricter-intent requirement. The fact is that in recent years there have been disclosures of a number of cases where federal officials and intelligence officials have misused their authority and violated the law. Would the public be better served for not having had the abuses come to light, or even letting the persons involved continue in their wrongdoing? The House bill invites coverups based on "national security" allegations.

As for totally excluding the CIA and other intelligence agencies from the Freedom of Information Act, such a step would be injurious to the public. The Freedom of Information Act already excludes the release of a broad range of classified information. To exempt a spy agency entirely from any measure of accountability is to make that agency in a sense the master of the public.

For lawmakers and the Reagan administration, the delicately balanced goal must be to protect US agents and spy agencies—as well as the public and nation they are called upon to serve.

[From the Boston Globe, Sept. 29, 1981]

The overwhelming House approval of sweeping legislation making it a crime to disclose the names of US intelligence agents poses a threat to the workings of the press and could limit the opportunity of Americans to learn about the doings of their own government.

So-called "names of agents" bills have been a staple of the legislative diet in Washington for five years. The primary target of all of the bills has been one man, former CIA agent Philip Agee, who has made a career of ferreting out and exposing the names of clandestine US agents abroad.

The object of Agee's work is to undermine US intelligence efforts and he does not have and should not have any political support. Thus, there is no opposition to provisions of the bill enacted by the House which would make it a crime for persons with access to

classified information to make public the names of agents.

The issue has always been how to treat the disclosure of agents' names by persons never with the intelligence community; that is, by reporters and scholars. Years have been spent trying to draft the narrowest possible language.

The House Intelligence Committee, led by Rep. Edward Boland (D-Mass.), ultimately agreed on careful wording that made it a crime for those without direct access to classified information to name agents only if they disclosed identities with the specific "intent to impair or impede the foreign intelligence activities of the United States."

This wording would not have prevented a reporter or scholar from reporting the activities of intelligence agents in a foreign country if the intent was to report on the activities of the American government—that is, to inform the American public about actions being taken in their behalf—not more narrowly with the specific purpose of undermining the work of those agents.

On the House floor, however, that wording was stricken and new language inserted. It allows for the criminal prosecution of persons who report the names of agents if they "had reason to believe" it would harm national security interests. That language is so broad that it ignores the motivation of the writer involved. It could well chill efforts, whether by scholars or journalists, to understand and publish accounts of American intelligence activities, including activities that would be abhorrent to the vast majority of Americans if revealed.

The next move is up to the Senate Judiciary Committee where there is certain to be a close vote on the precise language involving those, without direct access to classified information, who reveal the names of intelligence agents. The active involvement of Sen. Edward Kennedy particularly could be the key to approval of a reasonable bill that seeks to prevent the sabotaging of bona fide intelligence efforts without undermining First Amendment rights.

[From the Washington Post, Oct. 27, 1981]

NAMING AGENTS

Congress is intent upon ending the practice of a few spoilers' exposing the names of the United States' secret intelligence agents. This is a worthy purpose, but it gives rise to a troubling complication. The two main legislative proposals offered to punish namers of names would penalize publication, including in some instances publication of unclassified information available in the public domain, and thus both of the proposals would cut into the integrity of the First Amendment. One of the proposals, however, would cut a good deal less than the other. It is important that Congress recognize this difference as the crucial stage of Senate floor action draws near.

The House last month passed a bill that would criminalize publication of an agent's name merely, if there was "reason to believe" publication would impair foreign intelligence activities. This is dangerous legislation. It is not at all difficult to see how language of that sweep and looseness could be applied to journalists or others who brought news of American intelligence to light. Journalists regularly publish information that they suspect will have a negative impact. The First Amendment assures them their right to do so.

The Senate Judiciary Committee has since voted out, 9 to 8, a more acceptable bill. It opens namers of names to prosecution only if they acted with an "intent to impair or impede" intelligence activities. Such an intent—the traditional criminal test—would hardly be a part of most journalism. Meanwhile, the administration supports an effort to adopt the House bill on the Senate floor.

Supporters suggest that only the House bill would adequately protect the country's secret agents. But this contention is far overdrawn. Either bill in Congress would supply a legal sanction to move against the Philip Agees, the unprincipled people who have made a practice of blowing the cover of American agents in order to disable the CIA. Even the Reagan Justice Department now accepts that there is no potential Philip Agee beyond the prosecutorial reach of the Senate bill; that legislation is, a department official says, "enforceable and constitutional."

But where the House bill bites deeply into the First Amendment, the bill reported out of Senate Judiciary bites less severely. The House measure targets not only the Philip Agees but, potentially, also legitimate journalists. The Senate Judiciary bill strikes just at the Philip Agees. That is the reason why, of the two, we believe the Senate Judiciary bill deserves to be carried on the floor. But we trust that senators will note, at least in passing, that both infringe, to one degree or the other, a constitutional right.

[From the Indianapolis News, Oct. 12, 1981]

SAVING FREEDOM TWO WAYS

The Reagan administration appears to be passing up a good opportunity to take a stand on behalf of freedom of the press and still establish firmer protection for U.S. intelligence operations.

The issue is a law to make it a crime to identify undercover U.S. intelligence agents. The House of Representatives, with the support of the Reagan administration, has approved a sweeping version of legislation to make it illegal to identify agents. The Senate Judiciary Committee, on the other hand, has approved similar legislation, but with a provision designed to protect freedom of the press.

The difference between the two bills appears on an ordinary reading to be a matter of splitting hairs. The House bill would make it a crime for anyone to identify an agent or informer "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede" foreign intelligence operations. The proposal approved by the Senate Judiciary Committee would make exposure illegal when it is done "with the intent to impair or impede" foreign intelligence activities "by the fact of such identification or exposure."

Sen. Joseph R. Biden Jr., D-Delaware, offered this amended version of the legislation to avoid putting a damper on legitimate investigative reporting. A reporter could be prosecuted, for example, for uncovering and naming a Soviet spy in the CIA or for naming former CIA operatives engaged in narcotics smuggling.

A Reagan Justice Department official, Richard K. Willard, acknowledged before the Senate Judiciary Committee that the House legislation could be used to thwart ordinary news media reporting, but he said it probably would not be used that way in practice.

That's nice. The Reagan administration, we keep hearing, is made up of pretty nice guys who mean no harm to anyone. But the Reagan administration will not be around forever, and a future administration might not see things quite the same way.

Why legislate a potential threat to a basic constitutional principle? The amended version of the bill should serve just as well to prosecute persons such as Philip Agee, a former Central Intelligence Agency agent, and others who have published lists of agents for the stated intent of hindering intelligence operations.

The Reagan administration has already established a disturbing pattern of efforts to close off the free flow of information required by the Freedom of Information Act. Lining up on the side of the Senate Judiciary Committee version of this bill would offer a chance to reverse that pattern. The Biden amendment also provides a way to protect intelligence agents as well as freedom of the press.

[From the Nevada State Journal, Oct. 5, 1981]

SLAMMING SHUT ANOTHER DOOR

Here they come again, closing public doors faster than the public can turn around to see the doors slam shut.

"They" are our Washington representatives. And what they are closing, steadily, surely, and with increasing speed, is access to government.

In the latest instance, the House rode roughshod over its own Intelligence Committee Sept. 23 and voted to make it a federal crime to disclose the identity of a U.S. intelligence operative even if the operative's name is a matter of public record. And the act would be a crime no matter what the circumstances involved.

The committee had recommended making disclosure a crime only when there was "intent to impair or impede the foreign intelligence activities of the United States." But the House would have none of this, and voted 354 to 56 to install a sudden floor amendment to make disclosure a crime even if the news media were reporting the names of agents engaging in illegal activities, or trampling on citizens' rights.

The penalty: 10 years in prison and a $50,000 fine for past or present government officials, and three years in prison and a $15,000 fine for journalists.

This bill of course arose from a legitimate concern about the safety of agents. Former CIA officer Philip Agee has made a new and despicable career out of exposing agents, endangering their lives, and damaging the overseas operations of the CIA. And publications such as the Covert Action Information Bulletin and Counterspy routinely print the names of overseas CIA agents with the avowed intent of hindering their work. One would be hard pressed to defend any of these activities; and, in fact, few have—while many have quite properly condemned them.

Yet the House of Representatives, in its concern about these revelations, is creating an equal danger. It has declared that public records are not public, that intent is no factor, and that constitutionality does not matter.

For make no mistake about—the House bill's constitutionality is clearly questionable, according to legal scholars and other experts who testified before the committee.

What the floor amendment did was make the disclosure of an identity a crime whenever the government has reason to believe it might impair or impede foreign intelligence activities. This makes the government the accuser, the witness and the judge; i.e., it places the government in the role of dictator, able to conceal its own mistake as well as disclosure of agents, without let or hindrance.

But there is more: Rep. Ted Weiss, D-N.Y., complained that this bill "presents an incursion on the First Amendment unparalleled in the history of the nation during

peacetime. Never has the publication of information in the public domain by private citizens been made an offense."

In all intellectual modesty, one must ask how "secret" agents whose names are already in the public domain are endangered by the publication of their names. Certainly the "enemy," whomever that might be at a given time, would already have ferreted out this information. Under this bill as it stands, it really seems that it is the bureaucracy which is the main object of protection, rather than CIA agents. And it is the public which is most injured.

The Senate Judiciary Committee is scheduled to vote tomorrow on Nevadans should object vigorously to the bill in its present form. Times is short, but the bill can be defeated even now, if the public shows it knows the dangers created by the bill.

Let us protect overseas agents indefinitely. But let us do so through constitutional means which protect our control of government as well as the agents.

[From the Richmond Times Dispatch, Oct. 15, 1981]

PROTECTING U.S. SPIES

Philip Agee, a former CIA agent, indulged in the despicable practice of publishing the names of U.S. intelligence agents abroad in an effort to destroy their effectiveness. In the process, he gravely endangered the lives of these persons.

A law is needed to enable the government to move forcefully against anyone who intentionally puts our secret agents in jeopardy by revealing their identities. Congress is in the process of enacting such legislation.

The House of Representatives passed a bill designed to achieve that goal, but many people worry that while the bill's intent is laudable, its wording runs afoul of the First Amendment's protection of free speech. The bill would make it a crime for anyone to publish such names if he had "reason to believe" it could endanger the persons named. The fear is that a newspaper or broadcasting station or an individual writer might effectively be prevented from making public information about government corruption involving an intelligence agent if a government representative warned in advance that the publication could damage the agent.

So the Senate Judiciary Committee has voted 9-to-8 to narrow the bill to the extent that a person could be prosecuted for revealing agents' names only if he acted with specific "intent to impair or impede" the nation's intelligence activities. There was not the slightest doubt that Philip Agee acted from such a motive.

It is not easy to draft a bill that attains the proper balance between protecting agents' identities, on the one hand, and First Amendment rights, on the other. The most effective protection of the agents might be provided by making it illegal to publish their names under any conditions, but that would do violence to the principle of free speech, since there could be unusual situations in which such publication would be justified in the overall national interest.

The Senate committee amendment appears to represent a reasonable effort to strike the proper balance.

[From the Louisville Times, Oct. 21, 1981]

BAD BILL, BETTER BILL—SENATE SHOULD REJECT HOUSE CIA MEASURE

If there's a lesson to be learned from the government's lethargic reaction to the disclosure that former CIA agents helped Libyan terrorists, it's that public scrutiny of the intelligence agency is more necessary than ever.

Yet the House of Representatives, urged on by the Reagan administration, has passed a bill that could severely penalize newsmen and other researchers who disclose names of spies when reporting on intelligence activities.

Senators Huddleston and Ford can help head off this ill-conceived measure by backing a much tighter Senate version, which could come to the floor as early as this week. Mr. Huddleston has a special interest since he helped draft a charter designed to keep the CIA within constitutional bounds.

Both bills have the worthy goal of protecting undercover agents stationed abroad. On two occasions, CIA employees were attacked after anti-agency zealots disclosed their identities.

The trouble is that reporters and scholars and, for that matter, all private citizens, could be fined and jailed even if they "reveal" names gleaned from unclassified sources.

One result, whether intended or not, would be to discourage legitimate, necessary discussion of CIA failures, blunders and abuses, of which there have been plenty. Under the House bill, a prosecutor would only have to prove a reporter had "reason to believe" his investigation would impair or impede intelligence activities. Well documented stories often "impair or impede" misguided government programs.

Defenders of this approach argue lamely that newsmen and other citizens could report intelligence misdeeds to Congress, the CIA director or the Justice Department. These, of course, are the same folks who have been less than eager watchdogs in the past.

Or, goes the argument, critical material could be published without the names of wayward agents. In many cases, however, such self-restraint would simply contribute to a cover-up.

The Senate Judiciary Committee has come up with a better bill, and the Kentucky senators should join those who hope to fend off amendments. Under the Senate version, a citizen could be successfully prosecuted only if he disclosed names with malicious intent to disrupt intelligence work. That language could not easily be stretched to cover legitimate reporting.

President Reagan has given the senators another excellent reason to resist changes in their bill. He is considering a plan to allow the CIA to spy on American citizens, open mail, infiltrate legal groups and all the rest. This is not the time, in short, to relax surveillance of the intelligence community.

Mr. DENTON. Mr. President, there has been much rhetoric about the alternate approaches which we are now considering.

We have been told that the objective standard set forth in the Chafee/Jackson amendment would somehow impose a chilling effect on the press, which, it is asserted, would be inhibited from exercising its duty and right to uncover and disclose, to the public, incidents that its representatives believe violate the standards to which the intelligence community should be held.

We have heard that, with such an objective standard, reporters working with unclassified information could not contribute to the discovery of a mole who worked his way into the CIA. We have been told that the matter of Frank Terpil and Edwin Wilson would not have come to light if S. 391 were on the books with the "reason to believe" standard, because reporters would fear criminal prosecution. Both these arguments, in my judgment, miss the mark.

First of all, a Soviet mole in the CIA would be a Soviet covert agent, not a CIA covert agent, whatever his job description may say. He would work for the Soviets. They would be his masters, indeed his principals. To say that a Soviet mole would be a CIA covert agent is incomprehensible. His employment simply would be a cover, the means by which he would gain access to sensitive information.

So I think it is wrong to suggest chilling of the press—if in fact the target of its investigation is a mole. Parenthetically, I must note that a U.S. journalist has the same responsibility as any U.S. citizen to report such suspicions to Government authorities. This bill provides that the two Intelligence Committees of Congress should receive information of that nature.

A second argument has been advanced. It has been suggested that, had it not been for the press, we would not know what we do about Terpil and Wilson. I must say that I believe that argument overlooks the excellent work performed by the FBI, the U.S. Department of Justice, and the New York State Prosecutor's office. Yes; it is true that little had appeared in the press concerning Terpil and Wilson before one of the parties to the conspiracy furnished information to a noted journalist. The point is that, prior to that time, the investigation and prosecution of the case had been carried forward by State and Federal authorities. In fact, indictments had already been returned in New York, and were subsequently returned in the District of Columbia.

I am very sensitive to the concerns of the press, but on balance I believe that the American people want a law with teeth and that the agents who lay their lives on the line for us every day have a right to expect a law that affords them maximum protection. To adopt the "specific intent" standard would be misleading, for it would purport to provide a solution to the very serious problem of unauthorized disclosure of the names of intelligence agents without actually doing so. Moreover, the "subjective intent" standard would compel the Government to gather and present evidence about the particular motives of the defendant.

Mr. President, I urge my colleagues who are interested in putting a stop to the dangerous practice of naming names to join me in supporting the Chafee/Jackson amendment.

Mr. WEICKER. Mr. President, I strongly urge my colleagues to support S. 391, the Intelligence Identities Protection Act, as reported by the Judiciary Committee.

S. 391 makes it a crime to disclose the identity of undercover or covert intelligence agents. This criminal sanc-

tion applies to three classes of persons, the first two of which are persons who have had access to classified information which directly or indirectly identifies covert agents.

The third class of persons affected by the bill are those who had authorized access to classified information with its accompanying duty of care, but who:

In the course of an effort to identify and expose covert agents with the *intent* to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure * * *

discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent.

This third classification of persons without authorized access to classified information—section 601(c)—is clearly the most controversial section of the bill. The thrust of the bill is to make criminal those disclosures which clearly represent a conscious and pernicious effort to identify and expose agents with the intent to impair or impede the foreign intelligence activities of the United States by such action. As stated in the committee report:

It is the purpose of the committee in carefully specifying the above class to thereby preclude the inference and exclude the possibility that casual discussion, political debate, the journalistic pursuit of a story on intelligence, or the disclosure of illegality or impropriety in Government will be chilled by the enactment of the bill.

In carefully crafting this provision, the committee has wisely rejected the version passed by the House on September 23 which would apply the bill to those who disclose agent identities:

In the course of a pattern of activities intended to identify and expose covert agents and with *reason to believe* that such activities would impair or impede the foreign intelligence activities of the United States.

Interestingly, the House Intelligence Committee had voted 17 to 1 to report a bill with the same intent standard reported by the Senate Judiciary Committee. However, the full House adopted an Ashbrook amendment substituting the "reason to believe" standard. The House-passed language was incorporated into the bill introduced in the Senate but later amended in committee.

Mr. President, I am concerned with the constitutionality of both versions of the bill; however, I am convinced that the looser "reason to believe" standard represents an unwarranted assault on first amendment rights under the Constitution.

Both the House and Senate bills will adequately protect American intelligence agents; however, the Senate bill allows prosecution of those who disclose agent identities with the "intent to impair or impede" intelligence activities. In adopting the intent standard of proof—the traditional criminal test—the Judiciary Committee has acted responsibly to provide a legal sanction against those who intentionally blow agents' cover. The administration agrees that this bill will reach the Philip Agee's and other unprincipled individuals who seek to disable the CIA around the world. The Justice Department and the CIA have indicated that this bill is acceptable to it.

I strongly oppose any effort to substitute the House language establishing a "reason to believe" standard of proof. Such a loose standard is a dangerous assault on the first amendment in that it could affect conventional reporting by legitimate journalists. The narrower committee provision, adopted in response to serious concerns raised by many constitutional scholars, is clearly the responsible alternative, and I urge its adoption.

Mr. ROBERT C. BYRD. Mr. President, for too long our intelligence agencies have been the subject of attack and scorn and abuse. For too long, these agencies have been pilloried and accused of being responsible for virtually everything that goes wrong anywhere in the world. And these agencies, operating in the necessarily gray world of utter secrecy, are virtually helpless to defend themselves.

But there is a point at which a responsible line must be drawn, a point where we in the Congress have a responsibility to stand up and be counted and say, "No; beyond this line you are not permitted to go."

That line, in my judgment, involves the intentional publication of the actual names and identities of secret U.S. intelligence agents who have willingly put their lives on the line in defense of our country. That line involves those situations where agents' names are being published for the express purpose of harming these individuals and their missions.

No criticism of our policies requires the sacrificing of our intelligence agents. Therefore, Mr. President, this strong new criminal law, which would penalize the naming of these agents, is entirely justified.

There is little doubt that there is a handful of reckless individuals who at times seem to be intent on wanting to see harm befall our officers. Some of them have publicly expressed their desire to damage the intelligence operations of this country. It is their conduct which is the focus of this legislation.

Mr. President, I will be voting in favor of S. 391 in its present form because we must make sure that in our zeal to penalize the kinds of individuals I have just described, we do not exaggerate our effort to the point of losing this bill in the courts.

We must make clear that we are accomplishing what we say we are trying to accomplish; we must not leave our purpose open to challenge. I am fearful that in today's judicial climate, a challenge might be successfully maintained against a bill which sought to punish purely negligent reporting, as distinguished from the intentional revelation of names for the purpose of harming our country.

So I support S. 391 in its present form. The bill makes clear that we are seeking to punish those unscrupulous individuals who are avowedly seeking to harm our intelligence operations.

I commend the Senator from Delaware (Mr. BIDEN) and the Senator from New York (Mr. MOYNIHAN) and their colleagues on the Judiciary and Intelligence Committees for their wisdom in seeking to add this tough and essential provision to our Nation's criminal laws.

The PRESIDING OFFICER. Under the previous order, the hour of 1 o'clock having arrived, the Senate will now proceed to vote on the amendment of the Senator from Rhode Island. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New York (Mr. D'AMATO) and the Senator from South Dakota (Mr. PRESSLER) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. D'AMATO) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Nevada (Mr. CANNON), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "yea."

The VICE PRESIDENT. Are there any other Senators who desire to vote?

The result was announced—yeas 55, nays 39, as follows:

[Rollcall Vote No. 53 Leg.]

YEAS—55

Abdnor	Garn	Mattingly
Andrews	Glenn	McClure
Armstrong	Goldwater	Murkowski
Baker	Grassley	Nickles
Boren	Hatch	Nunn
Boschwitz	Hawkins	Percy
Bumpers	Hayakawa	Pryor
Burdick	Heflin	Rudman
Byrd, Harry F., Jr.	Hicks	Schmitt
	Helms	Simpson
Chafee	Humphrey	Stennis
Chiles	Jackson	Stevens
Cochran	Jepsen	Symms
Danforth	Johnston	Thurmond
Denton	Kassebaum	Tower
Dole	Kasten	Wallop
Domenici	Laxalt	Warner
Durenberger	Long	Zorinsky
East	Lugar	

NAYS—39

Baucus	Gorton	Moynihan
Bentsen	Hart	Packwood
Biden	Hatfield	Proxmire
Bradley	Huddleston	Quayle
Byrd, Robert C.	Inouye	Randolph
Cohen	Kennedy	Riegle
Cranston	Leahy	Roth
DeConcini	Levin	Sarbanes
Dixon	Mathias	Sasser
Dodd	Matsunaga	Specter
Eagleton	Melcher	Stafford
Exon	Metzenbaum	Tsongas
Ford	Mitchell	Weicker

NOT VOTING—5

Cannon	Hollings	Pressler
D'Amato	Pell	

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BRADLEY addressed the Chair.

The VICE PRESIDENT. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MATTINGLY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, before leaving the floor, I wish to thank all the Senators who supported my amendment. In particular, I would like to thank the senior Senator from Washington (Mr. JACKSON) who did such a wonderful job. I also thank Senators THURMOND, DENTON, and EAST, who have worked hard to see this amendment become law.

I also thank Senator BAKER, the distinguished majority leader, and Senator GOLDWATER, chairman of the Senate Intelligence Committee, as well as Senators GRASSLEY, TOWER, HEFLIN, HAYAKAWA, DURENBERGER, and WALLOP, who have taken the time to speak on this issue on the floor of the Senate.

Finally, I would like to thank Will Lucius, of Senator THURMOND'S staff, Joel Lisker, and Bert Milling, of Senator DENTON'S staff, and Sam Francis of Senator EAST'S staff, on the Judiciary Committee for their untiring efforts in getting this amendment through the committee, as well as Chip Andreae of Senator LUGAR'S, staff, Bob Butterworth of Senator JACKSON'S staff, and Victoria Toensing, chief counsel of the Senate Intelligence Committee. They have made a great contribution, and they should be commended for it.

Also, a special thanks to Rob Simmons, who is the staff director of the Senate Intelligence Committee.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT 828

(Subsequently numbered amendment No. 1339.)

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. BRADLEY) proposes an unprinted amendment numbered 828.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following: That this Act may be cited as the "Intelligence Identities Protection Act of 1981".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"PROTECTION OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

"SEC. 601. (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

"DEFENSES AND EXCEPTIONS

SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

"(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

"(2) Paragraph (1) shall not apply in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

"(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

"(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

"PROCEDURES FOR ESTABLISHING COVER FOR INTELLIGENCE OFFICERS AND EMPLOYEES

"SEC. 603. (a) The President shall establish procedures to ensure that any individual who is an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency, whose identity as such an officer, employee, or member is classified information and which the United States takes affirmative measures to conceal is afforded all appropriate assistance to ensure that the identity of such individual as such an officer, employee, or member is effectively concealed. Such procedures shall provide that any department or agency designated by the President for the purposes of this section shall provide such assistance as may be determined by the President to be necessary in order to establish and effectively maintain the secrecy of the identity of such individual as such an officer, employee or member.

"(b) Procedures established by the President pursuant to subsection (a) shall be exempt from any requirement for publication or disclosure.

"EXTRATERRITORIAL JURISDICTION

"SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

"PROVIDING INFORMATION TO CONGRESS

"SEC. 605. Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

"DEFINITIONS

"SEC. 606. For the purposes of this title:

"(1) The term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

"(2) The term 'authorized', when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any rule of the House of Representatives or resolution of the Senate which assigns responsibility within the re-

spective House of Congress for the oversight of intelligence activities.

"(3) The term 'disclose' means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

"(4) The term 'covert agent' means—

"(A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency—

"(i) whose identity as such an officer, employee, or member is classified information, and

"(ii) who is serving outside the United States or has within the last five years served outside the United States; or

"(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

"(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

"(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence of foreign counterterrorism components of the Federal Bureau of Investigation; or

"(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

"(5) The term 'intelligence agency' means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

"(6) The term 'informant' means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identify of such individual from public disclosure.

"(7) The terms 'officer' and 'employee' have the meanings given such terms by sections 2104 and 2105, respectively, of title 5, United States Code.

"(8) The term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"(9) The term 'United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

"(10) The term 'pattern of activities' requires a series of acts with a common purpose or objective. The main direction of said pattern of activities must be to identify and expose covert agents."

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.
"Sec. 602. Defenses and exceptions.
"Sec. 603. Procedures for establishing cover for intelligence officers and employees.
"Sec. 604. Extraterritorial jurisdiction.
"Sec. 605. Providing information to Congress.
"Sec. 606. Definitions.".

Mr. BRADLEY. Mr. President, the amendment I am offering is a substitute for the Intelligence Identities Protection Act as amended by Senator CHAFEE.

My amendment is a very simple one. It strikes a balance between protecting covert agents on the one hand and preserving freedom of speech and a free press on the other.

It achieves this balance by retaining the "reason to believe" test adopted by the Chafee amendment and by defining pattern of activities in the terms suggested by Senator GORTON earlier in the debate on this bill.

The Bradley substitute is thus essentially identical to the bill now before you except that the definition of pattern of activities is changed to read:

The term "pattern of activities" requires a series of acts with a common purpose or objective. The main direction of said pattern of activities must be to identify and expose covert agents.

As so many of my colleagues have eloquently argued, Mr. President, this change makes it clear that no criminal sanctions apply to disclosures of identities unless the primary intent of such disclosures was to expose a covert agent. Thus, where exposure is a mere side effect, as when a journalist is writing with the purpose of uncovering corruption in government, it would not make the author criminally liable under this statute.

Mr. President, as I have said many times before, it is imperative that we protect the men and women who daily risk their lives for our national security. It is also imperative that we do so without unnecessarily chilling free speech and freedom of the press.

This substitute, I believe, serves both goals. I urge my colleagues to support it.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, in the course of yesterday's debate on this legislation, the junior Senator from Washington asked that I consider an alternative to the amendment which I had on the floor. I indicated that even at that late date I would certainly be willing to review the Senator's proposal.

I have studied the suggestion, and this, of course, is the same language which the Senator from New Jersey is offering today.

The language states, as the Senator from New Jersey has pointed out, that the main direction under the pattern of activities must be the identification and exposure of covert agents.

Mr. President, I point out that this language has never been considered in the committees. It is language which neither the Department of Justice nor the Central Intelligence Agency endorses.

The problem with this language is that it imposes every difficulty on the prosecution that was originally the problem with the language as reported from the Judiciary Committee.

Obviously, in preparing this legislation, we had two matters to consider: We had to consider the first amendment rights and the protection of those in legitimate journalism who might mention the name of an agent inadvertently, or the names of several agents indeed. On the other side of the coin, we have the problem of providing protection for our agents abroad.

The difficulty with the language of the Senator from New Jersey is that it places an extraordinary burden on the prosecution.

We already have defenses for the defendant, the so-called six defenses that we have talked of many times, under section 601(c). But what is added now by the Senator from New Jersey is one more defense which, indeed, is impossible, or practically impossible, to overcome. That is, that the main direction of the disclosures were the identification of the names of agents. The defense obviously is, "That was not my main direction. My main direction was to expose the CIA activities across the world," or, "My main direction was to discuss the operations of the U.S. intelligence activities in Africa. And as an aside, an inadvertent aside, I claim I happened to list a whole string of agents' names."

As I stated yesterday in the debate, the sources of defense would be that the author told his wife he was just trying to write a book about Africa and the Central Intelligence Agency in Africa.

However, Mr. President, that is language that would destroy the whole purpose of section 601(c).

For those reasons, we rejected it yesterday. I considered it because the Senator asked me to do so and because I wanted to give every benefit of doubt to some type of accord that we might reach. But after careful consideration that language was rejected; indeed, it destroys the whole purpose of what we are attempting to achieve under 601(c).

I am prepared to yield the floor, Mr. President. If no one else wishes to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUMPHREY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I rise briefly to comment on the vote taken earlier today on the amendment of the distinguished Senator from Rhode Island which, of course, passed. It was not a close vote. There were 55 votes in favor, 39 votes against. I cannot fail to note that what was originally neither a partisan matter nor one in which the administration took a strong stand obviously ended as such, for the Vice President was in the chair prepared to cast his vote were

the Senate evenly divided and he, of course, would do that in response to the request of the President. We are always happy to see him here and welcome him on any occasion, but we know that his presence signifies an occasion when the outcome of a measure is expected to be close, and the administration feels strongly enough to wish to decide it, if possible.

Mr. President, I regret that, because it was clearly understood indeed, it was my understanding as vice chairman of the Select Committee on Intelligence, that the intelligence community wanted legislation but was prepared to have passed either the version of the distinguished Senator from Rhode Island or the version of the distinguished Senator from Delaware.

I wish to simply restate a thought I offered to the Senate yesterday, which is that we have embarked on a most unusual and, on the edge, alarming course. We are choosing to criminalize the publication in the press of information publicly available. If it became necessary to do this, we should have set the narrower of the grounds available to us and not the broader.

I speak, Mr. President, to a matter about which I can claim some knowledge and some feeling. I believe it is the case that I am the only Member of the Senate at this time who has served as an ambassador overseas in situations where there were members of the intelligence community in the Embassy in which I worked and in embassies in other parts of the world.

I would like, if I could interject, to make the point that I have also served as the U.S. permanent representative at the United Nations. There are no intelligence community personnel at the United Nations. We keep our commitment to the U.N. charter under article 100 in that regard. But overseas, as is well known, we have intelligence activities as do all nations, and in the case of India where I served, our intelligence activities were known to the Government of India.

The point I wish to make, Mr. President, is that owing to a long practice in our Government well known—I do not disclose a thing that is not fully in the public domain—we have failed to provide any but nominal cover as it is called for American intelligence operatives. Not that some do not have deep cover, as it is called, but those who work in American embassies might as well all be Alabamans or Georgians with a deep accent or Texans with high-heeled boots or Rhode Islanders with their wonderful accents, so conspicuous in evidence and well known are they.

And it is almost beyond the capacities of an American journalist in a foreign capital not to know the names of the intelligence community operatives. Nor is there any great reason they should not. I mean the better part by far of their activities is making semi-informed gusses about what the effects of the drought in Gujarat will be on the wheat crop there and the consequences for imports or exports, or what you will. I mean they are in the business of reporting matters of economic, political, and military intelligence. That is why they then watch parades on national days and look at the newest Soviet missiles as they rumble across Red Square.

I make this point, Mr. President, only to make it clear that we are making, we are on the edge of making, a crime out of the publication of information which is commonly available, information which is not difficult to obtain.

Now if we are going to make it a crime to publish such matters in the press, and the administration is so anxious to do so, do they realize that they have put in jeopardy a whole profession that might wish to report such matters as ongoing quasi-public activities of their Government?

Is the administration going to take, for example, any comparable measures to make these covert agents sufficiently so, so as to establish some real reason to be surprised that anyone knows their names?

I do not think so. I think we are errantly and somewhat arrogantly crossing a constitutional boundary. We are trivializing some of the most revered and protected and depended on constitutional protections that we have known in our country, the first amendment to our Constitution, not a recent one, not one that somehow came along at the time of the income tax measure.

I happen to believe that the amendment we adopted this afternoon is unconstitutional. I would not firmly assert that the alternative which was proposed to us by the Committee on the Judiciary was on the securest of constitutional grounds, but an argument certainly could be made that it is in the same basic form and structure which espionage acts have taken in the past and they have survived a court test, as they must. The court, in the Agee passport case, said the Government has a right to protect itself in these matters, and its actions would not fail a constitutional test. We have learned that this past year.

Even so, I would like to say today that I believe we have passed an unconstitutional amendment and, just as important, it is not just a "modest" violation of first amendment rights as a Member of this body has said and, nor, as he said, is it "consistent with overriding national security interests", because there are no such interests which would not be protected by the version offered by the Judiciary Committee. And so, a Member of this body has said this amendment may well intrude upon the Constitution, but only a little bit, as in the famous condition of being a little bit pregnant. This cannot be but a mournful and ominous event.

I do not wish to think of myself as someone who stands in this Chamber bringing forth ominous events on every third afternoon. Most events are too mundane or too familiar to be called ominous.

I make not just a constitutional point, but I want to raise the further fact, as I see it, that we are dealing here with the decision to criminalize the publication of information which, in so many cases, is for every practical purpose public. We are going to—I repeat—make criminal the publication of information which in many, many, many instances, in more instances than not, is public already.

Might I ask of anyone who wishes to respond, have we not made the decision to put out intelligence community in large buildings with names, of them and with signs pointing to them? If anyone were to park his car opposite the entrance to the CIA's headquarters in McLean, Va., and just take note of who comes and goes and were to draw the not unreasonable assumption that those who come at 9 in the morning and leave at 6 in the evening work there, how is that not to be known?

There are, as some of you may know, persons who are not friends of our Government, although unhappily citizens of our country, who have published a simple guide on how to tell the intelligence agents in an embassy. It is sort of a guide to spring wildflowers. It shows the various characteristics of the stamens and the petals and the various characteristic structures that will tell you that is a primrose—or if you wish to use a more threatening comparison, a guide to mushrooms in the forest; a guide that gives you the distinguishing characteristics of those you can and those you cannot safely eat. This is easily done.

I can report that one Sunday morning when I was serving in New Delhi, a colleague and I sat down over coffee one Sunday morning, and, pretending not to know, went through the diplomatic list we had submitted to the Government of India.

Then we went through the biographies as they are published in the so-called "Stud" book of the Department of State, looked at the work histories, and followed the directions for how to identify the intelligence agents. It obviously was not a rigorously scientific test, but we suspended our own knowledge as much as we could, and we said, "Sure, this person fits the following five categories; the probability is that he would be, she would be," and indeed they were.

I do not know that this is that well known in this Chamber. I hope it will be better understood, as we are not finished with this debate. It may be it is going to be one of those debates that goes on for a very long time.

Mr. President, I repeat two points: The amendment we approved is, in my view, unconstitutional. My view can have no greater weight than anyone else's in this Chamber, and less than jurists' and prosecutors'. But as a former Ambassador, I would like to

plead with the Senators to understand that we are making criminal the publication of information, which is in a very wide degree already public.

I thank the Chair for his courteous attention.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SYMMS). The clerk will call the roll.

Will the Senator suspend or defer his request?

Mr. MOYNIHAN. I am happy to do so.

Mr. CHAFEE. Mr. President, I would like to direct a couple of questions to the distinguished Senator from New York, whose remarks I listened to. I appreciate the point that he was making, that indeed we are making criminal activities of citizens who use material that is not classified. That is the whole point of section 601(c) in the amendment we passed this afternoon.

As I understood the Senator's forebodings as he expressed them, they would apply both to the committee language and to the amendment that was adopted this afternoon. On that point there is no difference.

Does the Senator agree with that?

Mr. MOYNIHAN. The Senator agrees. Before my distinguished friend came on the floor, I expressed my own genuine doubts about the committee language. I made the point that if we are to commence such a legislative exercise, the very least we could do is to pick the narrowest of grounds available to us.

Mr. CHAFEE. But either one, either the narrow version or what the Senator refers to as the broader version, encompassed activities of those who are not relying upon classified sources.

Mr. MOYNIHAN. That would be correct.

Mr. CHAFEE. So, thus, if that is the concern of the Senator, I do ask him what do we do? This is the quandry that I believe we all face. No one, certainly, and I know those that I have worked with on this amendment, no one willingly reduces the scope of the first amendment in any degree. But we are confronted with a problem. The problem is that we have Americans delving into unclassified sources to identify the names of covert agents—and it is not something now that you can sit down on a Sunday morning over coffee and talk about. This is because far greater efforts are now being made than were formerly made to protect the identities of agents.

As the Senator noted, once upon a time you could gather one or two publications and from that, with some knowledge of the background and of how the State Department and embassy employees are listed, you could come up with a reasonable facsimile of who might be the covert agents. This is no longer the case.

Mr. MOYNIHAN. And the Senator recognizes that. He was a distinguished Secretary of the Navy. He has some familiarity with these matters. And that is the case.

Mr. CHAFEE. That was the case. But it is my clear understanding, from testimony both from the Secretary of State in the prior administration, Secretary Vance, and others, that far greater steps are now being taken to conceal the identities, to provide so-called cover for our agents. It is not perfect, however.

As the Senator knows, the State Department is very jealous of certain prerogatives—what is a foreign service officer, for example? So the cover is not perfect.

So those Americans, with diligence, some knowledge, no classified materials, indeed never having dealt with or having been cleared in any way for classified material, can, by intense activity, produce lists that, while not perfect, come fairly close to the mark of disclosing who the agents are. In our language here, we always say "alleged agents" because that protects us. But unquestionably they are accurate enough to cause concern. Now there we are. This is what happens.

On the other hand, we send American men and women abroad on dangerous missions on behalf of this Nation. It seems to me we cannot continue to permit the publication of these names while at the same time we are funding, urging, and supporting wholeheartedly in this Congress the activities of these agents that we send abroad. Now what do we do? What is the answer?

Mr. MOYNIHAN. I recognize the dilemma. The Senator from Rhode Island knows of my absolute respect for his sincerity in this matter and his knowledge in this matter.

Could I leave him with one thought: He and I are members of the Select Committee on Intelligence. It has been said that better protection, in terms of cover, is to be provided our people. It would not be any great misuse of our time to have the committee hold a hearing on this sometime just to see how the things we have been given to think would happen have progressed. Because, if this becomes law, and obviously, it will, there ought then to devolve upon the administration a genuine responsibility to protect the identities of persons for whom we have legislated in the way we are going to do.

Mr. CHAFEE. I agree wholeheartedly with what the Senator is saying. He has had a very distinguished career on the Intelligence Committee, in which indeed he has been vice chairman and acting chairman for some time at different periods. I agree, I think it is incumbent upon this administration, as indeed it is on any administration, to do everything it can to provide effective cover.

We did have hearings 2 years ago on the subject in the Intelligence Committee, in which we had before us various witnesses. We worked hard on the cover matter, and we will continue to do so. I will support it and I hope we will continue our efforts.

But, nonetheless, for a variety of reasons no cover is perfect. And thus we get into this dilemma that truly exists. The Senator recalls 2 years ago we passed legislation dealing with this problem. So that was to be a help; incidental, but it was to be a help.

But cover is not perfect. And these lists go on. These lists are published. We have all seen them. Those who "name names" work hard at it. And I just feel we cannot tolerate that. To throw up our hands and say, "The first amendment prevents us from moving in and protecting Americans who are on these very dangerous jobs. The first amendment will not permit us Americans from prohibiting other Americans from publishing the names of American citizens sent abroad by this Nation," why that is incomprehensible.

Maybe the solution is not perfect. The Senator has indicated it is his belief it will not stand up in court. Our information is that it will. The Carter and Reagan administration Justice Departments say it will. But I would hate to think that the problem is so insurmountable that we would not tackle it.

Mr. MOYNIHAN. The Senator from Rhode Island knows I agree with him in that regard. And we will learn the outcome of the legislation as it appears to be going forward. And when we do, if it turns out that the courts do not accept it, we can go on to alternative measures.

In the meantime, let us indeed see if we have anything to show for the very late-blooming concerns in the Department of State as to the nature of this problem.

I thank the Senator.

Mr. CHAFEE. I certainly agree with the Senator.

Mr. President, I thank the Senator. We are both working for a common solution. If my solution is not the right one, and the court in any way indicates this to be the case, we will take another try at it.

Mr. MOYNIHAN. I thank the Senator.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I ask unanimous consent that it be in order to set aside temporarily the pending amendment offered by the Senator from New Jersey, and that it be in order to take up an amendment in the nature of a sense of the Senate resolution.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UP AMENDMENT NO. 829

Mr. HART. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. Hart), for himself, Mr. Kennedy, Mr. Quayle, Mr. Mitchell, Mr. DeConcini, Mr. Sasser, Mr. Leahy, Mr. Exon, Mr. Robert C. Byrd, Mr. Sarbanes, Mr. Weicker, Mr. Heflin, and Mr. Heinz, proposes an unprinted amendment numbered 829.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT

At the end of the bill, add the following:

Because, the Congress finds it is in the interest of the national security of the United States to combat international terrorism, and

Because, the present regime in Libya is aiding and abetting international terrorism, and

Because, Libya is able to threaten its neighbors and international order because of the revenues it derives from its oil trade, and

Because, the President of the United States, after consultation with Congress and discussions with appropriate foreign governments has decided to prohibit imports of Libyan oil into the United States, and to deny licenses for the export to Libya of U.S. origin oil and gas technology and equipment that is not readily available from sources outside the U.S.,

Therefore, it is declared the sense of the Senate that Congress strongly supports the President's decision to prohibit imports of Libyan oil into the United States, and to deny licenses for the export to Libya of U.S. origin oil and gas technology and equipment that is not readily available from sources outside the U.S.

Mr. HART. Mr. President, I wonder if I might ask the distinguished Senator from Rhode Island, the floor manager, what the proper procedure might be for obtaining a rollcall vote on this amendment at the proper time, which I understand will be sometime tomorrow, if that is permissible, and stacked with other pending votes.

Mr. CHAFEE. I was not clear whether the Senator wished a rollcall vote or not.

Mr. HART. Yes, I would like that, but I did not know what the proper procedure was for obtaining that.

Mr. CHAFEE. I wonder if the Senator would accept a brief delay here, or proceed and let me get back to him on that.

Mr. HART. I will proceed with my statement. If the Senator from Rhode Island would assist me in this matter, I would be most appreciative.

Mr. CHAFEE. I will do that.

Mr. HART. Mr. President, last Wednesday, March 10, 1982, the administration announced its plans to prohibit the import of Libyan oil to the United States and to deny licenses for the export of selected American oil and gas technology to Libya.

This measure is long overdue, but it is still most welcome and deserves the support of the Congress. Therefore, Mr. President, I am offering a resolution, as an amendment to the agent identities bill, to express the Senate's support for a ban on American imports of Libyan oil.

For years, the United States has supported Quaddafi's terrorism in north Africa and the Middle East by paying billions of dollars for Libyan oil supplies. When we bought Libyan oil, we replenished Quaddafi's treasuries, allowing the man whom the late Anwar Sadat called a certified lunatic to embark in more adventurism in the most volatile region of the world.

This unconscionable practice now has ended, by virtue of the President's decision last week. The United States has demonstrated it will not stand by passively and allow Qadhafi to sow violence and terror with impunity. Moreover, we have ended the hypocritical and expedient policies which lead us to sell arms to African countries threatened by Libya while refusing to take punitive actions against Qadhafi by cutting off an important source of Libyan income: American petrodollars.

Boycotting Libyan oil at this time should have no appreciable effect on the supply or price of oil used in the United States. Libyan oil constitutes only 2 percent of American oil imports and less than 1 percent of total American supply. According to the Department of Energy, American imports of Libyan oil in December 1981 were only 122,00 barrels per day. With the current surplus in world oil markets, American importers can replace Libyan oil with supplies from other foreign sources, including West African producers offering a sweet, light crude comparable in quality of Libyan oil.

To be serious about combating international terrorism, the United States must cut off the flow of American petrodollars to Libya. My resolution simply tells the President that the Congress recognizes how American oil dollars have supported Qadhafi's terrorism and that the Congress supports the administration's decision to end this intolerable practice.

Mr. President, as the principal sponsor of three measures last fall, starting in September 1981, to bring this policy about, I most personally and wholeheartedly endorse and welcome the President's decision. I would have preferred that it had come earlier in recognition of the facts that this statement has just outlined, concerning which those amendments and resolutions were proposed some months ago. Nevertheless, the action has been taken and I think it deserves the wholehearted support of the Senate and the Congress, as well as the American people. I think it would be timely on the occasion of this legislation to put this body on record in support of the President's action.

U.S. BANS IMPORTATION OF LIBYAN CRUDE OIL

● Mr. KENNEDY. Mr. President, I am pleased to join Senator HART and my other colleagues in sponsoring this resolution in support of the President's decision to prohibit imports of Libyan oil into the United States. Senator HART and I have called for this action for over 6 months. I welcome at long last the President's decision to implement our proposals.

Libya has continued to work against the interests of the United States in the Middle East. It is in the forefront of those Arab rejectionist states that call for the total destruction of the State of Israel. It continues to call for joint Arab action and sanctions against Egypt because of its decision to join the search for a true and lasting peace in the Middle East. Most recently, Colonel Qadhafi launched a vicious verbal attack against Saudi Arabia because of that country's relationship with the United States.

Libya continues its support for international terrorism. Openly the Government of Libya provides major diplomatic support and military assistance to the PLO. It has covert ties with numerous other international terrorist organizations.

As I have said repeatedly since last fall, it is immoral for the United States to provide Libya with the means to finance terrorism by importing Libyan oil. American industry and American homes should not be fueled by oil tainted with the blood of Libyan terrorism. Banning the importation of Libyan oil at this time will have no appreciable effect on the supply or price of oil used in the United States. Libyan oil now constitutes only 2 percent of total American oil imports and other sources of sweet, light crude comparable to Libyan oil are available from other foreign sources including countries in West Africa.

I hope this most recent action by the administration will be a loud and clear signal to Libya and to any other government that supports international terrorism that the United States will not condone state supported terrorism.●

Mr. HART. Mr. President, I have no further statement to make. I yield to the Senator from Rhode Island on procedure.

Mr. CHAFEE. I believe I can be helpful. First, as I understood the Senator when he offered this, it was a resolution which I thought stood by itself, but, as I understand, the Senator wishes to attach it to the measure we are considering.

Mr. HART. Yes, Mr. President. It would be an amendment in the nature of a sense of the Senate resolution, an amendment to the present bill.

Mr. CHAFEE. While not arguing with the Senator on that point, has he considered just having it as a resolution by itself? That does not affect the procedural matter but it would then stand by itself. I suspect it will be overwhelmingly approved. The other bill has to go to conference and may be bogged down. Maybe the Senator would wish that. I do not know.

Mr. HART. I understand the concern and the point the Senator from Rhode Island is making. A similar resolution was introduced a number of weeks and months ago. Unfortunately, as the Senator knows, one does not always get immediate consideration of those matters by appropriate committees. Hearings have to be held, and so on. In the meantime, as I say, some days ago the President has already acted. While we waited for a resolution to make its way out of committee, get to the floor and be put on the calendar, I think weeks and weeks would go by and any sense of immediacy of this matter would be lost.

Mr. CHAFEE. Mr. President, obviously, whatever the Senator wishes to do is fine. I am not objecting. I do not see any problems, however, in just having the resolution on its face and considering it in passing. I do not think that it would be necessary for this resolution to go to conference, would it?

Perhaps I am mistaken.

Mr. HART. Not as a sense-of-the-Senate resolution, No; it would not.

Frankly, Mr. President, I say to my friend and colleague that this is as much a symbolic gesture as anything else, putting the Senate on record in support of the President. If it were adopted at the conference, it would be all the better, because then the House would be on record in support also. It is merely a resolution thanking the President and supporting his action. Therefore, I do not think it should be a serious item in the conference.

Mr. CHAFEE. So it is the Senator's desire to have it as he suggests here, as an amendment to the bill.

Mr. HART. If the distinguished floor manager so agrees, yes.

Mr. CHAFEE. Mr. President, I wonder if we may have a brief conference here.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, I withdraw the amendment.

The amendment (UP No. 829) was withdrawn.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GARN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE CONCURRENT RESOLUTION 72—REAFFIRMATION OF U.S. BACKING OF DEPOSITS IN FEDERALLY INSURED DEPOSITORY INSTITUTIONS

Mr. GARN. Mr. President, on behalf of the Committee on Banking, Housing, and Urban Affairs, I wish to submit a Senate concurrent resolution reaffirming that deposits, up to the statutorily prescribed amount, in federally insured depository institutions are backed by the full faith and credit of the United States.

It is to be submitted on behalf of myself, Mr. TOWER, Mr. HEINZ, Mr. LUGAR, Mr. D'AMATO, Mr. CHAFEE, Mr. SCHMITT, Mr. PROXMIRE, Mr. CRANSTON, Mr. RIEGLE, Mr. SARBANES, Mr. DODD, Mr. DIXON of the Committee on Banking, Housing, and Urban Affairs; Mr. BAKER, Mr. HATCH, Mrs. HAWKINS, Mr. MCCLURE, Mr. MURKOWSKI, Mr. RUDMAN, Mr. EAGLETON, Mr. HEFLIN, Mr. BAUCUS, Mr. RANDOLPH, Mr. SASSER, Mr. DOMENICI, Mr. ZORINSKY, Mr. FORD, and Mr. CANNON.

This is a joint effort. I want to make sure the record understands this. I have worked with the chairman of the House Banking Committee, Mr. ST GERMAIN, and all members of the House Banking Committee are sponsoring a similar resolution which was introduced in the House of Representatives day before yesterday, which I would expect to be passed tomorrow in the House.

There is no doubt that the savings and loan industry has been having great difficulty. There are many people who have been asking questions about the safety and soundness of the institutions. I believe everybody is aware that accounts are insured up to $100,000 through the FDIC and the FSLIC. Both committees of the House and the Senate want to make sure that the American public and the depositors with these institutions understand that, even beyond the FDIC and the FSLIC in these difficult times, this concurrent resolution would put everyone on notice that Congress stands behind the insured amounts up to $100,000, with the full faith and credit of the U.S. Government so there would be no possibility of these insured accounts losing any of their money.

Mr. RIEGLE. Mr. President, I urge all Senators to vote for this concurrent resolution.

Simply stated the concurrent resolution says that all deposits in federally-insured depository institutions are backed by the full faith and credit of the United States up to the statutorily prescribed amount, which is $100,000.

Americans naturally assume that their deposits are safe and secure when they are placed in federally-insured banks, savings and loan associations and other federally insured depository institutions.

This assumption is not misplaced, and this concurrent resolution will stress again that ironclad Federal guarantee.

Since the 1930's the American people have relied upon Federal deposit insurance to guarantee their funds. I believe it is important in the present financial climate to emphasize that the Congress and the Federal Government stand behind our national commitment to safeguard these funds. In many cases the money in a single account often represents an entire life's savings. This concurrent resolution reaffirms that depositors' funds are both safe and secure.

Mr. GARN. At this time, I will withhold for just a moment. I will ask unanimous consent that this be placed on the calendar, but then being the only Senator on the floor, I believe we do need approval of the minority.

While we are gaining that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GARN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WARNER). Without objection, it is so ordered.

Mr. GARN. Mr. President, I now yield to the distinguished Senator from California.

Mr. CRANSTON. Mr. President, I am pleased to join and have joined as a cosponsor of this concurrent resolution. I applaud the initiative of the chairman of the committee in bringing it before the body at this time.

All the minority members of the Banking Committee are cosponsors, and we have cleared this via the hotline with all offices of the minority, so we are prepared to proceed.

Mr. GARN. I thank the Senator from California.

I add, since my opening remarks, that we have had several additional Senators who desire to cosponsor the resolution. They are: Mr. DOLE, Mr. MELCHER, Mr. EXON, Mr. GORTON, Mr. HUDDLESTON, Mr. COHEN, Mr. LEVIN, Mr. WARNER, and Mr. ROBERT C. BYRD.

Mr. President, I ask unanimous consent that the concurrent resolution be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROMPT ACTION NEEDED ON DEPOSIT INSURANCE

Mr. SASSER. Mr. President, I was very pleased to note the action of the Senate Banking Committee in securing unanimous committee endorsement of a concurrent resolution pledging the full faith and credit of the United States to the commitments of

the Federal Deposit Insurance Corp. and the Federal Savings and Loan Insurance Corp. The cosponsorship of Senate Concurrent Resolution 72, corresponding to House Concurrent Resolution 290, scheduled to be agreed to by the House tomorrow, will insure that the intent of the concurrent resolution is carried out. That intent is to reassure the American people, large and small depositors alike, that their money is safe in our financial system.

It has been a matter of certainty to those involved in policy and planning in the financial system that insured deposits would be covered by the FDIC/FSLIC and ultimately the U.S. Treasury if necessary.

But recent reports in the news media about the troubles encountered by U.S. savings and loans, coming on top of 2 years of worsening economic news, have created a level of anxiety among the public about the safety of their deposit accounts.

This anxiety, if allowed to grow unchecked, could lead to the kind of fears that encourage depositors to withdraw their funds—thereby creating even more dislocations in our fragile economy, leaving less capital available for critically-needed development and business expansion. If the drain from depository institutions accelerated to a sufficient degree, it would also cost U.S. taxpayers in direct contributions to the insurance funds from the Treasury.

In an effort to head off this trend before it gained any more credence among the American public, I, along with 16 of my colleagues submitted Senate Concurrent Resolution 70 on March 16. In essence, that concurrent resolution provides the same assurances as the House and Senate Banking Committee versions under consideration. I am pleased to join with my colleagues from the Banking Committee in cosponsoring Senate Concurrent Resolution 72 in a show of unanimity on this vital issue, and I would also note the indorsement of the cosponsors of Senate Concurrent Resolution 70 of the Banking Committees' version.

It is my hope and belief that the concurrent resolutions to be agreed to by the House and Senate this week will have the necessary effect of calming any fears among the public regarding the safety of their money in the Nation's depository institutions. And I would again compliment Banking Chairman GARN on the speed and thoroughness of his leadership in bringing this concurrent resolution before the Senate.

Mr. President, I ask unanimous consent that the Senator from Kentucky (Mr. FORD) be listed as a cosponsor of Senate Concurrent Resolution 70.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GARN. Mr. President, I further state that I particularly appreciate the support of Senator HEINZ from the Banking Committee who was very helpful in cooperating and in getting this concurrent resolution ready to go to the Senate floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Idaho is recognized.

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

The Senate continued with the consideration of the bill (S. 391).

REAFFIRMATION OF U.S. POLICY TOWARD CUBA

Mr. SYMMS. Mr. President, it was my intention to offer an amendment to this legislation which deals with the critically dangerous situation we have developing in the Caribbean. After careful consideration of the importance of the Intelligence Identities Protection Bill, S. 391, I have decided not to offer my amendment today on this legislation. I have deferred offering my amendment because I do feel that this is a very, very important piece of legislation that is long overdue, that is certainly needed by the intelligence community in the United States.

I would like to announce to the Senate, however, that it is my strong intention to seek a vote within the next couple of weeks on the floor of the Senate on the amendment that I was planning to attach to the agent identities bill. I will, just for the information of the Senate, point out that this resolution that I introduced, Joint Resolution 158, on March 4, 1982, has 14 cosponsors, including the majority leader of the Senate. The other 13 cosponsors are as follows: Senators HELMS, DENTON, EAST, MATTINGLY, HAYAKAWA, GOLDWATER, WARNER, THURMOND, MCCLURE, KASTEN, TOWER, GARN, and myself.

The original Joint Resolution 230 passed the House and the Senate with overwhelming bipartisan majorities in September of 1962. I will be offering it either in the form of an amendment on pending legislation that will come before this body in the near future or as a standing up or down resolution if an agreement can be reached between the majority and the minority to bring it before the Senate soon for a vote.

There are several important aspects of this amendment. First, and most significantly, it reaffirms the law of the land on American policy toward Cuba, as embodied in the Senate Joint Resolution 230 passed overwhelmingly by bipartisan majorities of both Houses in September 1962. It is Public Law 87-773 (76 Stat. 697). Second, the amendment reaffirms the Monroe Doctrine first announced in 1823, and the Rio Treaty of 1947. Third, the amendment has several policy thrusts:

It expresses the determination of the United States to prevent, by force if necessary, the Soviet-backed Communist regime in Cuba from engaging in aggressive or subversive activities in any part of the Western Hemisphere;

It expresses American determination to prevent the Soviets from establishing a military base in Cuba;

It states American support for the freedom and self-determination of the Cuban people.

The amendment is fully consistent with and supportive of President Reagan's Caribbean policy announced on February 24, 1982.

Mr. President, I would like to take this opportunity to make some comments on my amendments before we vote on S. 391. It was highly appropriate and germane that I was considering offering an amendment to the National Security Act of 1947, as will be seen.

First, Mr. President, I would like to reiterate the most significant Soviet activities going on now in Cuba. General Jones, our current Chairman of the Joint Chiefs of Staff, has joined me and Representative JACK KEMP, of New York, in accusing the Soviets of clear-cut violations of the Kennedy-Khruschchev agreement of 1962. The Soviet acts which violate the agreement according to numerous press reports over the years, are as follows:

The Soviet strategic submarine base built at Cienfuegos, complete with a nuclear warhead handling facility.

The visits of Soviet *Golf* and *Echo* class submarines to Cienfuegos, carrying strategic nuclear warhead-equipped, long-range missiles.

The Soviet TU-95 Bear heavy bombers, capable of carrying nuclear bombs or nuclear air-to-surface missiles, which regularly fly to Cuba.

The 66,000 tons of Soviet military equipment shipped to Cuba during 1981, three times more than in 1962.

The nuclear-missile-equipped Soviet naval task force tours of the Caribbean in 1981, threatening vital oil fields.

The 40 nuclear delivery capable Mig-23/27 fighter-bombers in Cuba.

The Soviet combat bridage in Cuba.

Mr. President, it is important to have available the Kennedy-Khrushchev agreement of 1962, not only for our colleagues but also for the public. Accordingly, I have made the full declassified text of the Kennedy-Khrushchev agreement available. Even a cursory comparison of the Kennedy-Khrushchev agreement and the Soviet actions reported in the press, that I have noted, shows how flagrantly that agreement is being violated.

I would add, Mr. President, that our President now faces a very difficult problem. What faces the Commander-in-Chief, is the fact that in the soft underbelly of the United States, the Caribbean basin, Fidel Castro has

become a real cancer clearly threatening American security. We must do everything in our power as Senators to support the President in this hour of grave danger to our national security. If our troops are ever committed to thwarting Communist aggression and subversion in the Western Hemisphere, we must back them to the hilt.

Mr. President, other top Reagan administration officials, besides Joint Chiefs Chairman General Jones, have charged the Soviets with violating the Kennedy-Khrushchev agreement. The Director of the CIA, Mr. William Casey, said the following in an interview with U.S. News & World Report:

QUESTION. Does what is happening now in Cuba violate the 1962 Kennedy-Khrushchev agreement ending the missile crisis?

Answer by CIA Director CASEY. Oh sure it does, because the 1962 agreement said the Soviets would send no offensive weapons, and it also said there would be no export of revolution from Cuba. The agreement has been violated for 20 years.

Mr. President, I think it is also useful to cite exactly what JCS Chairman General Jones actually said on the Soviet violations of the Kennedy-Khrushchev agreement of 1962; Congressman JACK KEMP asked General Jones the following question on March 4, 1981, in open hearings before the House Budget Committee:

Congressman KEMP. You talked about the global threat, General Jones. I wanted to ask you, is it not true that those Mig-23 jets on the docks of Cuba, and with new helicopters in Cuba, and a massive infusion of military equipment by the Soviets into Cuba, that there is a de facto, if not a de jure violation by the Soviet Union of understandings that this country has (had) with them.

General JONES answered. We interpret it (Soviet actions in Cuba) as a violation. In my judgment, they (the Soviets) have gone beyond the 1962 accords and have gone beyond clearly the Monroe Doctrine (in) Central America. They (the Soviets) are now the dominant military power in the Caribbean by a wide, wide margin. They (the Soviets) are building up Nicaraguans to be the dominant military power in Central America.

Mr. President, I would also like to mention a colloquy between my colleague, Senator DENTON, and Under Secretary of Defense for Policy, Dr. Fred Ikle, on March 11, 1981. At that time, Under Secretary Ikle appeared in effect to comfirm the New York Post headline of March 11, 1982, "Nuke Bases in Cuba." Moreover, Ikle stated that the 1962 Kennedy-Khrushchev agreement had been eroded away to nothing by Soviet actions.

Senator DENTON asked Under Secretary Ikle the following on March 11, 1982:

There is a headline in the New York Post, March 11, 1982: "Nuke Bases in Cuba, Sites Ready to Launch Soviet Atom Subs, War Planes, Bigger Threat to United States Than the 1962 Missile Crisis." If in fact these press reports are accurate—and we have other reasons to believe that they are—in your opinion, have the Soviets engaged in a clearcut violation of the Kennedy-Khrushchev agreement of 1962?

Secretary IKLE. There are two observations to be made. One, in direct answer to your question, that agreement has been constantly eroded so that there is very little left of it, indeed if there is anything left. Secondly, it is really not an actual agreement; it is a juxtaposition of unilateral positions, and one of the conditions, the verification condition of President Kennedy, was never fulfilled.

So in that sense their part of the bargain at the very outset was not completed. But even apart from that, what remained of their promises, as I said, has been constantly eroded.

Mr. President, on Sunday, March 14, Congressman ROBERT DORNAN, of California, was interviewed on NBC's Meet the Press program. Congressman DORNAN cited new Soviet submarine pens being built at Cienfuegos in Cuba, and Soviet Mig-27 nuclear-capable fighter-bombers being deployed in Cuba. Representative DORNAN has therefore joined JACK KEMP, General Jones, CIA Director Casey, Under Secretary Ikle, and myself in accusing the Soviets of violating the Kennedy-Khrushchev agreement of 1962.

Before I go into the specific aspects of the Kennedy-Khrushchev agreement that are being violated, I would like to show you this copy of the New York Post. As I mentioned, the headline and feature story "Nuke Bases in Cuba" was in effect confirmed as accurate by Under Secretary Ikle. I would also like to make my colleagues aware of several other Soviet actions in Cuba which are largely unknown but which further violate the Kennedy-Khrushchev agreement:

First, there are pictures in both Cuban and Miami, Fla., newspapers of Soviet long-range, nuclear warhead equipped, surface-to-surface cruise missiles being paraded in Havana in 1964, 1965, and 1966. Two types of long-range cruise missiles were shown, one naval, called the SS-N-12 Shaddock, and the other, the J-3, launched from truck trailers. Both of these types of missiles have a range estimated to be greater than 1,450 nautical miles, which is comparable to the Soviet SS-4 Sandal, medium range ballastic missiles deployed to Cuba in 1962.

Second, there are several authoritative published reports that not all of the Soviet SS-4 MRBM's were withdrawn in 1961. At that time the Soviets publicly admitted having 42 SS-4 MRBM's in Cuba, and pledged to withdraw them all. But according to various authoritative published reports, only 38 of the 42 Soviet SS-4 MRBM's were actually observed by U.S. intelligence aerial reconnaissance photography as actually being withdrawn. Where are the remaining four MRBM's? In some of the many Cuban caves?

Third, according to page 20553 of the CONGRESSIONAL RECORD of September 20, 1962, the day the original Senate Joint Resolution 230 was so overwhelmingly approved, the Soviets had 75 Mig jet fighters in Cuba, and 250 tanks. But according to the testimony of Under Secretary Ikle on March 11, 1982, there are now over 200 Soviet Mig fighters and over 650 Soviet tanks in Cuba. The number of Soviet Mig's in Cuba has thus almost tripled, and the number of Soviet tanks in Cuba has likewise almost tripled. Moreover, the Soviets have given the Cuban Navy two *Foxtrot* attack submarines, which are offensive weapons capable of interdicting vital U.S. Shipping lanes throughout the Caribbean.

Fourth, in 1966 there were photographs of Soviet Frog surface-to-surface nuclear-warhead equipped tactical missiles being paraded in Havana. These missiles have short range, but their range is sufficient to attack targets in the United States, and they too have never been withdrawn.

Mr. President, the above evidence can be added to the evidence I cited earlier of Soviet violation of the Kennedy-Khrushchev agreements. I would now like to cite the relevant portions of this agreement, which are being violated:

. . . work to cease an offensive missile bases in Cuba and for all weapons systems in Cuba capable of offensive use to be rendered inoperable . . . you (Khrushchev) would agree to remove these weapons systems from Cuba under appropriate United Nations supervision, and undertake . . . to halt the further introduction of such weapons into Cuba . . . Khrushchev stated that "We—the Soviets—have instructed our officers . . . to take the necessary measures to stop the construction of the facilities indicated—missile sites—and to dismantle and return them to the Soviet Union" "I (Kennedy) consider my letter to you as firm understandings on the part of both our governments which should be promptly carried out.

Mr. President, in conclusion, I would like to point out that last weekend, the Tidewater Conference of Republican leaders unanimously passed a resolution which explicitly left open the option for the United States to use force if our interests are threatened in Latin America. This resolution is very similar to the wording of the amendment now being offered. Second, I ask for bipartisan support for my amendment. An identical amendment was passed overwhelmingly on September 30, 1962, by a bipartisan vote of 86 to 1. The only dissent was from a Senator who thought the resolution was too weak. He wanted an immediate quarantine and blockade of Cuba. Our revered, late President Kennedy signed the joint resolution into law on October 3, 1962.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FLEXITIME

Mr. STEVENS. Mr. President, I have a bill that I would like to introduce and have it held at the desk for the purpose of considering it tomorrow following the action on the agent identities bill and on the Libyan oil resolution. It is my understanding that it would require unanimous consent to have this bill taken up. Incidentally, it is a bill that would be cosponsored by the distinguished Senator in the chair at the present time.

The PRESIDING OFFICER. For the record, that is the Senator from Virginia.

Mr. STEVENS. The Chair is correct.

Mr. FORD. Which Senator from Virginia is that?

Mr. STEVENS. The Senator from Virginia (Mr. WARNER).

We have worked on this bill and are prepared to offer it to try to deal with the problem that the flexitime and compressed schedule authorization in Public Law 95-390 expires on March 28. It has been a long, hard road to get to this point where we do have a bill which I believe I can state has no opposition, so far as the bill itself is concerned, although not everyone is entirely happy with it.

The Senator from Colorado is here and he has indicated in discussion a time agreement to take this bill up. I am prepared to ask for a time agreement to take this up following the consideration of the Libyan resolution tomorrow, with a 1-hour time frame for its consideration to be equally divided in the usual form.

Let me inquire of my friend from Colorado. Would he have an amendment to be covered by such a time agreement also?

Mr. ARMSTRONG. Mr. President, if the Senator will yield, before responding directly to his question I would like to compliment the Senator from Alaska for so skillfully bringing this matter to a conclusion, or at least to a near conclusion.

The notion of flexitime which has been tested during the last 3 years by Federal employees has proven to be, in many instances, a very popular and worthwhile program. Flexitime is not for everybody, it is not for every agency, it is not the kind of thing that is applicable in every circumstance. But the general response of places where it has been tried, including in my own State of Colorado, indicates that it has been a successful experience.

Nonetheless, there was some opposition to the idea of simply extending the flexitime concept and, as I understand it, and the Senator can correct me if I am mistaken, it is my understanding that it will expire in a few days unless further action has been taken.

I am aware that behind the scenes the Senator from Alaska has very skillfully brought together different interests and people who have concerns about this legislation, and has put together a package which is broadly acceptable not only within this Chamber but which is believed to be acceptable in the other body and in the White House and, for that matter, which will serve the needs of employees and the general public. So I congratulate him for that.

I am somewhat in doubt, however, about the need for a time agreement. I do have some amendments to offer, and I understand there may be some other Senators, at least one, who wish to offer amendments. But I can assure the Senator from Alaska that there is no intent on my part, nor so far as I know the intention of any other Senator, to delay the passage of this bill, to bring in extraneous issues, or in any way to slow down the consideration of this matter, which is very timely and very worthy of consideration.

I would suggest that when the proper moment arrives I would encourage the Senator simply to ask unanimous consent to proceed to the consideration of the bill in the normal course. Certainly, the Senator from Colorado will offer no objection, if that is the case.

Mr. STEVENS. I might say to my friend that it is my understanding that in order to make this bill the subject of consideration by the Senate it would take unanimous consent.

Mr. ARMSTRONG. I will not object, I say to the Senator.

Mr. STEVENS. It is my understanding, however, that there will be an objection from the distinguished acting minority leader on behalf of at least one other Senator—and now I am informed several Senators——

Mr. ARMSTRONG. Would the Senator yield to allow me to inquire what is the objection? Perhaps they know something about this legislation that I do not know. My impression is that this is worthy legislation and that there is general agreement that the flexitime matter has been successful. Why would Senators object?

Mr. STEVENS. Mr. President, it is my understanding that there would be an objection if an attempt was made to offer an amendment which dealt with flexitime or compressed schedules contrary to the Walsh-Healy Act, and that that was the nature of the amendment the Senator from Colorado intended to offer.

Mr. ARMSTRONG. Mr. President, if the Senator will yield further, I would like to make two observations in response to that.

First, the whole idea of requiring as a condition of preclearance of legislation that Senators forefeit their right to offer amendments on any subject just does not go down well with me. I am one of those who thinks we are here to legislate, and I am a legislator. I am here to consider legislation and, where I think it is appropriate, to offer amendments.

I would be hopeful that it is not the intention of the distingushed acting minority leader to tell us that amendments will simply be ruled out, that for some reason we cannot even get consent to take up bills if Senators do not agree in advance to forfeit their right to offer amendments. I am sure that is not his intention.

Mr. FORD. Will the Senator yield?

Mr. ARMSTRONG. Yes.

Mr. FORD. Mr. President, I am not objecting to the Senator's right, I am objecting to a time certain, as he is objecting. I have a right to object, as he does. I am not objecting to keep the Senator from offering amendments. I am going to object to the bill, for any time certain for any amendments. I am not sure that it has gone the route of the committee. I am not sure that the Senator's amendment is germane. I am just here trying to protect the rights of other Senators, as well as I am trying to protect his right.

I do not want to be placed in the posture of trying to preclude the Senator's offering an amendment. I say to the Senator from Colorado that he gave eloquent words to the ability of the Senator from Alaska and I agree with those. What they have put together is obviously reasonably acceptable on our side and probably, if we could just take the bill and move with that, without any other amendments, in the view of this Senator, it could probably fly tonight. Otherwise, there will be inaction on this side.

Mr. STEVENS. Mr. President, may I say that the amendment of the Senator from Colorado is not within the jurisdiction of the subcommittee that I chair. Therefore, it could not have been considered by our committee as it was brought to the floor. I am sure the Senator from Colorado realized that. It is entirely within his province and within his right to offer such an amendment on the floor but it does give us the added problem of securing clearance for a unanimous-consent request to set aside the business that is already ordered by the Senate in order to consider this.

As I have stated, it is my understanding that it is on that basis that the Senator from Kentucky has been asked by Senators to object if there is an attempt to take up the bill, on the basis that amendments that would not be within the jurisdiction of our subcommittee would be considered in connection with a limited timeframe for consideration of this bill on an emergency basis.

Mr. ARMSTRONG. Mr. President, if the Senator will yield, I think there is perhaps a misunderstanding, because that is not what the distinguished acting Democratic leader has said. On the contrary, he has said that he would not object, if I have understood him correctly, to a unanimous-consent request to proceed to consideration of the bill; that only if the request incorporated a limitation on time for debate of any amendments that the Senator from Colorado or others might offer would he object. So, at